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ABSTRACT

Designed to be used in combination with standard high school textbooks in U.S. history and government, these lessons on the U.S. Constitution can be used singly or in varying combinations and most can be completed in one or two class meetings. There are five chapters. Chapter I is an introduction for teachers. Chapter II includes lessons about the origins and purposes of the U.S. Constitution. The third chapter contains lessons about principles of governmental organization and power in the Constitution. Chapter IV has lessons that feature formal and informal means of constitutional change. The fifth chapter contains 20 digests of landmark Supreme Court cases. Worksheets containing questions to help students analyze the cases are provided. Students are expected to read and answer questions regarding the lesson selections, which include short readings, case studies, and primary source materials. They also read and discuss books, view films, and clarify their own decisions and analyze the decisions of others by filling in a chart known as the "decision tree." Each lesson contains materials for students and lesson plans and notes for the teacher. Lists of additional print and nonprint materials are also provided. (RM)

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LESSONS ON THE CONSTITUTION

SUPPLEMENTS TO HIGH SCHOOL COURSES IN AMERICAN GOVERNMENT AND AMERICAN HISTORY

JOHN J. PATRICK

RICHARD C. REMY

SO 015 026

For Project '87
Sponsored Jointly by
The American Historical Association
The American Political Science Association

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CHAPTER I

INTRODUCTION FOR TEACHERS

This is a book for high school teachers of courses in American history and government. It includes lessons about the U.S. Constitution that fit established goals and curriculum patterns of American secondary schools. The lessons are designed to supplement treatments of the Constitution in high school American history and government textbooks.

Purposes of the Lessons

The aim of this book is to help you, the teacher, strengthen education about the Constitution in your American history and government courses. The book includes original lessons, which are connected to topics in standard textbooks. However, the lessons do not duplicate textbook content. Furthermore, they are not presented as a comprehensive survey of constitutional history, law and theory. *Rather, they are designed to:*

- help fill important gaps in textbook coverage of constitutional topics,
- enrich current textbook treatments of major subjects, and
- enliven the curriculum with ideas and information that should be interesting to students in history and government courses.

Each lesson in this book is also designed to help students achieve one or more major goals that represent longstanding concerns of American civic educators. These goals are to help students:

1. comprehend more fully the origins of our Constitution;
2. know the purposes of the Constitution in our political system;
3. increase their knowledge of main constitutional principles and the operation of these principles in our society and government;
4. understand the dynamics of formal and informal constitutional change;

5. understand Supreme Court decisions of fundamental importance;
6. analyze constitutional issues of the past and present;
7. use knowledge of the Constitution to interpret decisions and actions of government officials and the responses of citizens.

These goals reflect the pervasive influence of the Constitution in American political life. As a symbol, the Constitution is an unchanging expression of the unity, continuity and ideals of the American nation. As a practical instrument, the Constitution is a dynamic legal framework for popular government. From busing students to setting the limits of the President's power, citizens regularly confront constitutional issues that directly affect their lives and the destiny of the nation.

Citizens who do not understand the Constitution cannot know how their government affects them. Of course, knowledge of the Constitution alone is not sufficient to comprehend political reality in the United States. It is, however, a necessary condition for knowing how the government works. In particular, knowing main ideas of the Constitution enables citizens to understand what the government may do for them, what it may not do to them, and what they may do to sustain civil liberties and the rule of law.

How to Teach the Lessons

Each lesson in this book is a complete instructional activity designed to cover particular content and/or skills and to help students achieve one or more stated objectives. Each lesson consists of material for students and lesson plans and notes for the teacher.

Time Required. The lessons are designed to be completed in one or two class meetings. A very few lessons might take as long as three or four class meetings. These few lessons have more dimensions than the others. Most of these longer and more complex lessons can be finished satisfactorily in one or two class meetings by not requiring students to complete activities provided primarily to extend learning beyond the objectives of the lessons.

Use Alone or Together. The lessons may be used singly or in varying combinations throughout a course in American history or government. Thus, any lesson can be used without reference to other lessons in the book. However, the lessons are designed to be used in combination with standard high school textbooks in American history and government.

Some lessons can be linked to one or two others in this book to form a set. For example, Lesson III-1 introduces the meaning of a major concept, federalism. Lessons III-2 and III-3 require students to use the concept of federalism to interpret episodes about government. The lessons in such sets, however, can be used singly.

Some teachers may use most of the lessons in this book. However, most teachers probably will select a few lessons and sequence them to meet day-to-day instructional needs.

Fit with Curriculum. The lessons are designed to supplement textbook material on the Constitution. Content that is treated adequately in most standard textbooks is not used as subject matter in the lessons. For example, standard textbooks include ample discussions of the "Great Compromise" at the Constitutional Convention. Thus, there is no lesson in this book about the "Great Compromise" concerning representation in Congress. By contrast, most textbooks include little or nothing about decisions at the Constitutional Convention that formed the office of President. Thus, this book includes a lesson (II-7) about decisions that created the office of President at the Constitutional Convention.

The lessons are designed to help teachers deal more effectively with topics that are rooted in American history and government courses. They do not call upon you, the teacher, to depart significantly from your course objectives and content. Rather, lessons are organized and presented to help you link them to the content of commonly used textbooks.

Chapter II includes lessons about the origins and purposes of the U.S. Constitution. Chapter III consists of lessons about principles of government in the Constitution. Chapter IV has lessons that feature formal and informal means of constitutional change. The introductions to Chapters II-IV describe main ideas of the lessons in each chapter.

Chapter V consists of 20 "digests" of landmark Supreme Court cases. Worksheets to guide students in their use of the cases are included with each digest. Thus, these materials can be used as lessons. However, they also can be used as reference materials, because they are convenient sources of information and ideas that can supplement classroom lectures, discussions or student research activities. Several of the lessons in Chapters II-IV might also be used as reference materials, rather than as lessons.

An "Appendix" to this book includes a copy of the U.S. Constitution. It may be used as a source of information in conjunction with the lessons in this book. However, students in high school history and government courses are likely to have access to copies of the Constitution in their classrooms.

Each of the American history and government textbooks includes a copy of the Constitution; in most textbooks, annotations or explanations are presented with the document. Thus, it seems unlikely that teachers will need to duplicate and distribute to students the copy of the Constitution, which appears in the "Appendix" of this book. However, this copy of the Constitution may serve you, the teacher, as a conveniently placed reference tool. Thus, it may assist you in your use of the lessons in this book.

The "Appendix" also includes a series of notable quotations that offer various perspectives and insights about the Constitution. These quotes can be used to spark and illuminate discussions or to exemplify main ideas in a lecture. One might stimulate a discussion by writing one or two quotes on the chalkboard and asking students to explain and appraise them.

Format of Lessons. The lessons are organized in an easily followed, practical format. Each lesson in Chapters II-V includes materials for students (white pages) and lesson plans for teachers (yellow pages). It is expected that teachers will duplicate and distribute copies of the student materials to members of their history and/or government classes.

Each lesson plan (yellow pages) includes a description of the main points or themes of the lesson, the instructional objectives, and suggested procedures for teaching the lesson. In addition, there are suggestions about connections of each lesson to the content of textbooks in American history and government. These suggestions provide guidance about how each lesson can be used to supplement the content of standard textbooks. Finally, many lesson plans include annotated lists of books and films which are related to the main points of the lessons.

Lessons are concluded with application exercises or activities. Application exercises require students to use ideas and information presented previously in order to indicate achievement of lesson objectives. A particular lesson may have some exercises that are quite challenging and complex. Some teachers may wish to have all of their students complete all the application exercises at the end of a lesson. However, other teachers may not want to spend that much time on a given lesson; so they will use the application activities selectively. Another alternative is to assign easier or simpler exercises to the entire class and to assign more challenging or complex activities only to brighter students. Thus, the more challenging activities would serve to enrich and extend the learning experiences of the brighter students.

Steps in Teaching. Little time is needed to prepare to use a lesson. *To teach a lesson,* follow these steps.

- Read the materials for students (white pages) and the lesson plan for teachers (yellow pages).
- Make copies of the student materials.
- Follow the teaching suggestions for opening, developing and concluding the lesson.

It is important to emphasize that the lesson plans are presented as suggestions, not as prescriptions. It is very likely that many teachers will modify or adapt the lessons and lesson plans to make them more useful in a particular situation. Furthermore, many teachers are likely to alter lesson plans so that they conform to instructional procedures or strategies with which the teachers are more comfortable or are able to use more effectively with their students.

Main Features of the Lessons

The lessons in this book reflect sound ideas about instructional design. Ideas that guided the development of the lessons are clear organization, active learning, use of concrete examples and instructional variety.

Clear Organization. Each lesson includes a clear statement of purpose(s), well organized subject matter that pertains to purposes, and provision for meaningful student use of subject matter. Effective curriculum materials help teachers and learners to know what they are expected to do, how they can do it, and when they have done it correctly. Students learn better from lessons that are organized to help them recognize the purposes, means to achieve the purposes, and knowledge of successful achievement.

Each lesson is introduced with a clear statement of purpose. Students are guided in the acquisition and use of knowledge and skills they are supposed to learn. To demonstrate achievement, students must be able to apply or use facts, ideas, or skills as indicated by lesson objectives. Thus, each lesson includes application exercises, which are connected to the purpose(s) of the lesson.

Active Learning. The lessons encourage active learning--the application of knowledge to completion of various kinds of cognitive tasks. Active learning means the meaningful use of knowledge. Lessons in this book are designed to require organization and interpretation of information, construction of valid generalizations, and appraisal of ideas.

Concrete Examples. The lessons include numerous examples to illuminate complex constitutional principles. The lessons dramatize theoretical content by showing the human side of constitutional topics through the use of concrete and interesting examples. Whenever it is feasible, lessons include familiar examples to make abstractions and remote information more meaningful.

However, those who learn only in terms of immediate experience are likely to be less capable than those with expanded horizons. Thus, the lessons expose learners to new ideas and information and enable them to generalize from familiar and tangible events to situations outside their immediate experience. Good curriculum materials help learners increasingly to expand the range of experiences and events that may be perceived as meaningful to them.

Instructional Variety. A variety of instructional strategies and techniques are used to create different types of lessons. Curriculum materials should not require students to follow a single routine during an entire course of study. Instructional variety can promote student interest and motivation. Furthermore, different teaching techniques are appropriate for the attainment of different types of objectives. Different types of learning require different teaching procedures. Thus, the lessons are designed to make an appropriate fit between objectives and teaching procedures. Finally, the instructional variety of these lessons provides teachers with alternative kinds of lessons. The possibility of satisfying a wide range of educational needs is provided.

How to Use Decision Trees

Several lessons in this book involve the use of a Decision Tree to analyze historical events or situations. For example, Lesson IV-3 has students use a Decision Tree to study Jefferson's decision to purchase Louisiana. What is a Decision Tree?

The Decision Tree is an analytical tool that helps students study the decisions of others as well as make their own decisions. It is based on a problem-solving procedure that involves mapping the likely alternatives and consequences of an occasion for decision.*

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*See, for example, Howard Raiffa, *Decision Analysis* (Reading, Massachusetts: Addison-Wesley Publishing Company, 1968). The Decision Tree, as used here, was developed by Roger LaRaus and Richard Remy as part of the work of the Mershon Center at The Ohio State University. See Roger LaRaus and Richard C. Remy, *Citizenship Decision Making: Skill Activities and Materials* (Menlo Park, Calif.: Addison-Wesley, Innovative Publications Division, 1978).

Decision Trees may be used by students of history or government to analyze complex issues or events, to study key decisions in history and/or to sharpen critical thinking/information acquisition skills through analysis of historical cases.

How do students use Decision Trees? In Lesson II-6 students apply a Decision Tree to George Washington's decision to attend or stay away from the Constitutional Convention. *This lesson is designed to introduce students to the Decision Tree.* Reading the lesson (whether you, the teacher, plan to teach it or not) will help you understand this teaching strategy.

The Decision Tree on the following page is from Lesson II-6.

Decision Trees graphically show the four key elements of decision-making. As students fill in Decision Trees, they use these elements to analyze historical issues and decisions in a systematic fashion. These elements are discussed briefly below.

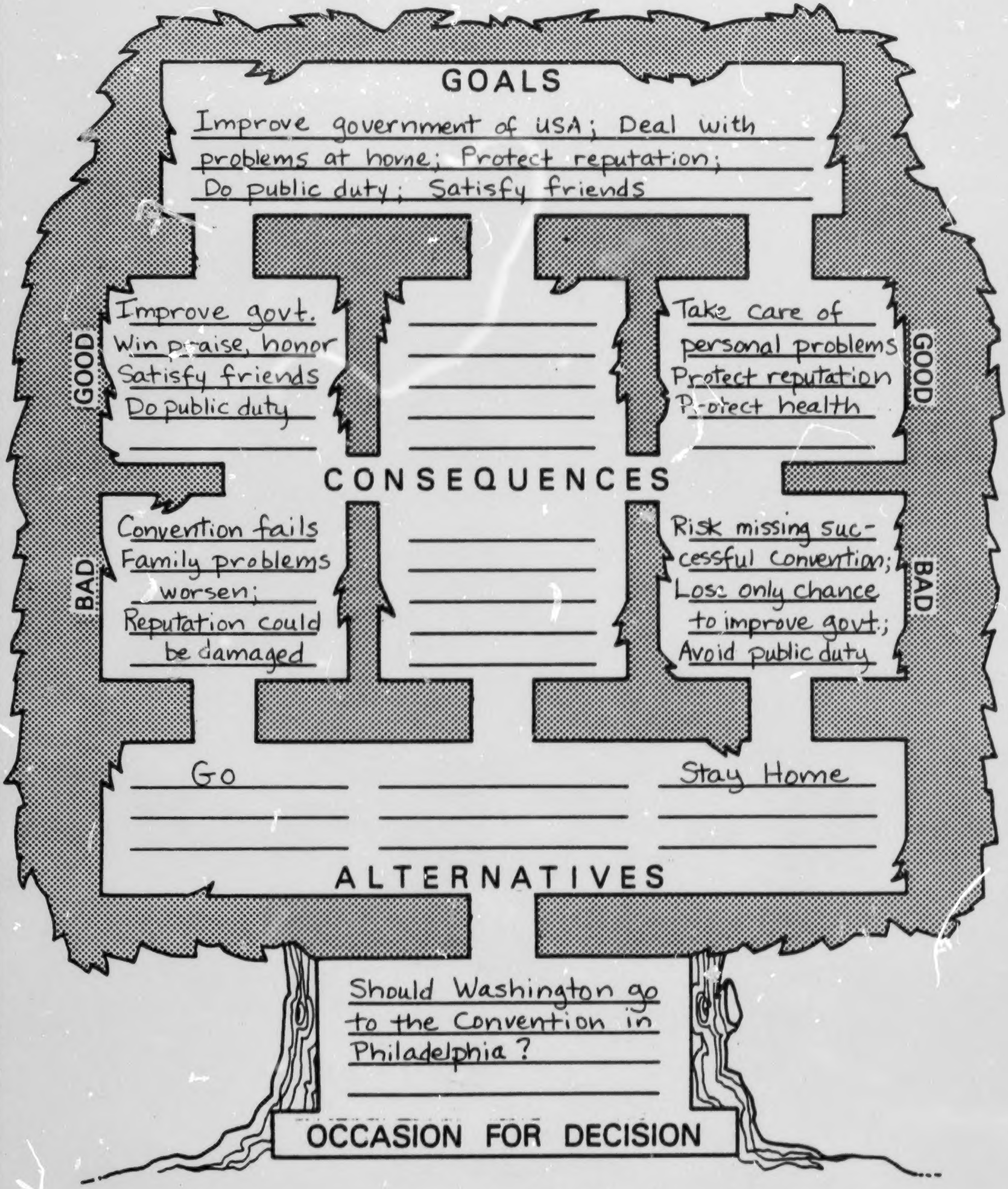
1. *Confrontation with the need for choice--an occasion for decision.* An occasion for decision is a problem situation where the solution is not obvious. The occasion for decision is the *context* for the decision problem. For example, Washington, an advocate of a strong central government, was invited to attend the Constitutional Convention. To go to the Convention involved serious political risks. Furthermore, Washington felt pressured to stay home to deal with serious personal problems. However, he wanted to be part of any moves to change the government of the United States.

2. *Determination of important values or goals affecting the decision.* One goal for Washington was to deal with his problems at home. Another goal, however, was to strengthen the government of the United States of America.

3. *Identification of alternatives.* Alternatives in this situation were to attend the Convention or to stay at home.

4. *Predicting the positive and negative consequences of alternatives in terms of stated goals or values.* Washington considered likely consequences of his choices. For example, to attend the Convention could lead him to neglect family problems. Missing the Convention would forfeit his opportunity to help improve the government. However, staying at home would avoid any political risks, if the Convention failed.

DECISION TREE



GOALS

Improve government of USA; Deal with problems at home; Protect reputation; Do public duty; Satisfy friends

CONSEQUENCES

GOOD

Improve govt.
Win praise, honor
Satisfy friends
Do public duty

Take care of personal problems
Protect reputation
Protect health

BAD

Convention fails
Family problems worsen;
Reputation could be damaged

Risk missing successful convention;
Lose only chance to improve govt.;
Avoid public duty

ALTERNATIVES

Go

Stay Home

OCCASION FOR DECISION

Should Washington go to the Convention in Philadelphia?

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

"Climbing" the Decision Tree. Once they have studied the *occasion for decision*, students may begin work on the remainder of the Decision Tree at any point. There is no one "correct" or "right" place to start on a Decision Tree. Sometimes students may start at the bottom with *alternatives* and work up. With other problems it may be more natural or appropriate to begin by considering the *values or goals* in a problem and work down. The students' perception of the goals involved in a decision or the alternatives available may change as they work their way through the Decision Tree.

Using Facts and Values. When using a Decision Tree, students learn that both facts and values are involved in decision-making. Facts are involved when decision-makers identify and consider alternatives and their likely consequences. Should Washington attend the Constitutional Convention? In part his decision involved assessing facts? Who called the Convention? Did other leaders plan to attend? Did Congress approve of the meeting?

Values and value judgments are also a critical part of thoughtful decision-making. Decision-makers express value judgments when labeling consequences as negative or positive. While establishing goals, the decision-maker is engaged in thinking about values and in ethical reasoning. Such thinking involves asking, "What is important, what do I want, and what is right or wrong in this situation?"

Using Films to Teach About the Constitution

Several films are recommended for use with various lessons in this book. Annotated listings of these films are presented at the end of several lesson plans.

Films can be a very effective supplement to instruction about the Constitution. This section answers these questions:

(1) Why use films in teaching about the Constitution?
(2) What criteria should be used to select films?
(3) What are sources of films on the Constitution?

Why Use Films? Film has important values that should be kept in mind when deciding upon the best way to meet teaching goals. Film compels attention--it takes a special effort not to look at a film. Film can heighten reality through the manipulation of time, space and objects. Film can expose students to other places, the past, and even "the future." It can build a common denominator of experience among its viewers. Film can influence attitudes--though not necessarily in predictable ways! Through realistic photography, animation, sound, color and motion, film can promote an understanding of abstract relationships. And film can offer a satisfying aesthetic experience.

The following values may also be found in films about the Constitution.

- The Constitution is a document that embodies abstract concepts. There are films that clarify these concepts with a variety of concrete illustrations.

- The "birth" of the Constitution occurred over a period of time, and it has grown and developed over the last two centuries. Film can trace this flow of time and highlight key events in a way that maintains historical continuity.

- The Constitution affects both the nation as a whole and individual citizens. Film using dramatic and documentary techniques can present both the broad and the personal aspects of constitutional issues, and demonstrate the application of constitutional principles in the daily workings of the nation and in the lives of citizens.

- The study of history and government, while filled with abstract concepts and complex structures, involves people. Film can bring these "real people" into the classroom to tell their own stories of their involvement in constitutional history and the effect of governmental structures on their lives.

- While it is difficult to weave together in a textbook or other printed material a variety of themes, issues, and concepts, this can be done within a film, thus displaying the true complexity of society, government and politics.

Of course, knowing what films can do is not the same as deciding if and when to use them. There are several ways to use films to complement the lessons in this book. If you want to lead your students into a new topic, to focus their attention on new learning objectives, to interest them in certain subject matter, to raise questions, or to get them to speculate about events and trends, you may want to use film as a "springboard" into other lessons.

If you want to obtain an informal assessment of what your students know by having them respond to a new situation similar to others they have already encountered, you may want to use film in its "application" function.

If you want to provide your students with an in-depth look at a topic, helping them to gain more extensive knowledge and developing their skills in comprehending, interpreting and appraising knowledge, you may want to use film as an integral part of a larger unit of content.

The Limitations of Films. As with any other teaching tool or method, there are some cautions to be observed with film use. Probably the most obvious--and important--is don't use film if another medium is more effective. When students must assimilate much information, including facts about places, dates, names, etc., film is not likely to be either efficient or effective. A film that attempts to cover large amounts of information on historical topics will usually be both boring and overwhelming, even though it "covers" the desired content.

Although contemporary students are generally considered to be media veterans, film techniques can create confusion, especially in matters related to time and causality. For example, a film that telescopes decades or even centuries of time may leave students insensitive to the gradual evolution of ideas, and reinforce a sense of instant decision-making or occurrence on-the-spot; or, when one event immediately follows another in a film, there may be an incorrect or simplistic cause-and-effect relationship set up in students' minds.

Occasionally, films will contain misinformation or outdated information. Sometimes, more recent scholarship turns up new facts or leads to different interpretations of events. Such films may not be invalidated, but if used they must be corrected or reinterpreted by the teacher or through the use of other supplementary materials.

It almost goes without saying that when films contain new concepts or terms, students may need additional support in assimilating these ideas. Or if concepts emphasized in a film are of minor consequence in your curriculum, you will need to decide if the value of the film is great enough to outweigh any possible student confusion. You, the teacher, may need to place that concept in its proper relation to your classroom objectives before the film can be used.

Six Criteria for Film Selection. If you have decided to use film, there is only one way to determine if a particular film is what you want: a preview. Here are six criteria for judging films you preview.

1. *Appropriateness of Content Coverage*. This may be determined in a number of ways. You may be looking for a film that deals solely with one topic or concept. In that case, your preview assessment of a film's content coverage should be relatively simple: either the film covers a sufficient kind and amount of information on the topic you want, or it doesn't.

   However, there is another way to approach film previewing. Either on your own or with other teachers with similar subject area responsibilities, you may wish to preview a larger selection of films, noting the various content emphases within each film and assessing its potential for use in several different topical areas. Chapter headings II through V offer one way to identify each film's content and the extent of its emphasis on each chapter topic. For example, a film's major focus may be on one or more main principles of the Constitution (Chapter III), while it also deals significantly with several landmark cases of the Supreme Court (Chapter V). In such an example, there are at least two possible uses for the film, and you can determine if either of them is compatible with your curriculum.

2. *Accuracy and Quantity of Content Coverage*. Films are made by people who, like all of us, are not infallible. Some films are well-researched; some are not. Some can become outdated. You will need to judge if misinformation and misinterpretation exist and how important such errors are likely to be in comparison to the film's overall value. Also, some films, though accurate, pack too much or not enough information into their footage. If you want to use film as a "springboard," for example, you may want to be light on the informational load and heavy on the interest-arousing emotional aspects of a topic.

3. *Quality and Appropriateness of Instructional Methodology*. Does the film rely on subject-matter experts on camera to tell the story of the politicking backstage at the Constitutional Convention, or does it use a dramatic format? Does the film invite students to respond to open-ended dilemmas within it, or are answers pat and solutions provided? Knowing what you want your students to derive from the film and seeing if the film's instructional approach complements your objectives and your own teaching style will help you assess the film's value.

4. *Ability to Capture and Hold Student Attention*. How interesting is the film? Is it a "talking head?" Is it a documentary with footage from the time being studied? (Does it contain dramatic vignettes interspersed with narrative continuity?) Are there emotional aspects, or is it heavily cognitive?

5. *Appropriateness for Grade Level and School Curriculum*. There are many films that have been produced for college-level history and government courses, and though their content coverage may be right, their linguistic level or concept density may be wrong for your students.

6. *Technical Quality of Sound and Visual Aspects*. Is the speech of the narrator or actors clear? Is the film itself filled with splices, cue marks, scratches? Are there missing segments that contain key concepts or actions? Is the film so old that its production style detracts from its content?

Assessing films on these six criteria will aid you in making choices among films available to you. But what is available to you?

Source of Films. There exist literally hundreds of educational films relating to the U.S. Constitution. To get an idea of the total array of what exists, consult two major references that can be found in the reference section of most public or university libraries. The first reference is the Index to 16mm Educational Films, published annually by the National Information Center for Educational Media (NICEM) at the University of Southern California. The NICEM Index lists all known materials, without consideration of availability. Some of their listings may no longer be in print or may have been replaced by newer editions. If you use the NICEM Index, look under these headings:

- Civics and Political Systems
    - Constitution - U.S.
    - Constitutional History
    - Constitutional Law
    - Constitution
    - Democracy
    - Federal Government

- U.S. History
    - Constitutional History
    - Documents

Under these headings you will find film titles. Annotations of these titles may be found in another section of the Index. The annotation will tell you the film's length in minutes, whether it is color or black and white, the film's contents, whether the film is part of a series, the suggested grade level audience, the film's producer and distributor, and its year of release in the United States.

The second major reference is the Educational Film Locator (EFL), published by Bowker. The EFL lists all films held in educational libraries throughout the country. To find films on the Constitution, look under U.S. Constitutuion; U.S. Government; U.S. History: Revolution, 1783-1860 (etc.); and Government. The subject categories contain film titles which are annotated in another section of the catalog with the same kind of information as in the NICEM Index.

Whichever reference you use, you will be able to locate the distributor of films that interest you. The distributors and their mailing addresses are found in a separate section of both references. You or your school librarian or media specialist can then obtain information on a distributor's rental or sales policy. Most film rentals through university film library services are inexpensive. There are dozens of such university film libraries around the country, and their holdings are often similar, so you should be able to obtain the films you want if you allow enough time for locating them, ordering them, and having them sent to you. Your school library may already have the catalogs of some of these film centers. If not, you may want to have the library get on the mailing list for several centers nearest you.

Some films in the reference are available only through commercial educational materials distributors. While these may cost more to rent, it may be possible to preview the films at less than full rental. Often these films are more up to date and have better production qualities than the majority of films available through university film libraries, so your chances of finding a good film may be increased by going through the commercial sources.

To find out about new film releases, you may want to have your school librarian or media specialist ensure that your school receives announcements and catalogs from major educational film distributors. You may also want to consult periodicals for reviews of new materials. Two such publications are Curriculum Review, published five times a year by the Curriculum Advisory Service, and Media & Methods, published nine times a year by the American Society of Educators. Curriculum Review covers not only new audiovisual media (films, filmstrips, etc.) but print packages in all major curriculum areas. Media & Methods deals not only with film but other media as well. Its film coverage includes both educational films and commercial films that are recommended for school use. Both publications describe and evaluate new materials.

Several films were selected to complement lessons in Chapters II through V of the Sourcebook. Annotated listings of these films are presented in many of the lesson plans in this book. Most of these films were reviewed and rated by a panel of social studies educators in a study conducted at the Agency for Instructional Television.* The remainder of the films were chosen for listing in this book based on the annotations found in the EFL and the NICEM Index. Such films were usually part of a series containing films rated highly by the reviewers in the AIT study. While all these films fit the general categories suggested by the chapter headings in this book, you will need to preview them to be sure they fit your particular curriculum and instructional objectives.

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*See: An Analysis of Films on the U.S. Constitution, Research Report Number 85. Agency for Instructional Television (AIT), Bloomington, Indiana, September 1981.

Unless otherwise noted, all the titles are 16mm color sound films. All have running times of approximately thirty minutes or less to allow you lead-in, viewing and follow-up time in one class period.

Films listed in various lesson plans of this book are not the only good films available about the Constitution. These items are a starting place--there are many more films from which to choose. The items listed here are intended specifically for instructional use. The listings do not include films produced for the commercial market that you can see in theaters or on television; however, such films can be another source of material to support your teaching, depending upon your instructional goals.

A Brief List of Recommended Books for Teachers

The books listed in the lesson plans pertain to particular themes or points. Following are a few books that might serve teachers as general references or sources of stimulation as they plan and carry out lessons about the Constitution.

Bowen, Catherine D. Miracle at Philadelphia (Boston: Little, Brown and Company, 1966).

This is the dramatic story of the Constitutional Convention, May to September of 1787. The clashes, compromises and achievements of the convention are presented vividly and memorably. This book can be read easily by most high school students.

Burns, James MacGregor. The Vineyard of Liberty (New York: Alfred A. Knopf, 1982).

This is the story of the origins and shaping of the American Republic, from the Constitutional Convention to the Civil War.

Farrand, Max. The Framing of the Constitution of the United States (New Haven: Yale University Press, 1918).

This is the classic narrative of the day-to-day events at the Constitutional Convention.

Garraty, John A., editor. *Quarrels That Have Shaped the Constitution* (New York: Harper & Row, Publishers, 1964).

Notable historians discuss sixteen landmark cases of the Supreme Court. Each of the sixteen chapters is a very readable story of one significant case, its origins, issues and constitutional significance.

Hamilton, Alexander, James Madison and John Jay. *The Federalist Papers*, Roy P. Fairfield, editor (Baltimore: The Johns Hopkins University Press, 1981).

This is one of several readily available and inexpensive paperback editions of this classic work on the principles of constitutional government in the United States.

Kelly, Alfred H., and Winfred A. Harbison. *The American Constitution: Its Origin and Development*, 5th edition (New York: W. W. Norton & Company, 1976).

This is the leading college textbook in constitutional history.

Lockard, Duane, and Walter F. Murphy. *Basic Cases in Constitutional Law* (New York: Macmillan Publishing Company, 1980).

Analyses of several landmark decisions of the United States Supreme Court.

Morris, Richard B. *Great Presidential Decisions* (New York: Harper & Row, Publishers, 1973).

The author discusses critical presidential decisions, which have changed the course of American history. State papers in which the decisions were announced and/or defended are included.

Morris, Richard B. *Seven Who Shaped Our Destiny* (New York: Harper & Row, Publishers, 1973).

This is a volume of vivid profiles of seven Founding Fathers: Franklin, Washington, Adams, Jefferson, Jay, Hamilton, and Madison. The influence of these men on the founding of the United States is the main theme of this book.

Morris, Richard B., editor. *Encyclopedia of American History*, 6th edition (New York: Harper & Row, Publishers, Inc., 1982).

The basic facts of American history are condensed in this volume. It is a valuable resource for teachers and students.

Peltason, Jack W. *Corwin and Peltason's Understanding the Constitution*, 8th edition (New York: Holt, Rinehart and Winston, 1979).

This is a classic account of American constitutional principles. It is used widely in college courses on the Constitution.

Smith, Page. *The Constitution: A Documentary and Narrative History* (New York: William Morrow and Company, Inc., 1980).

This is the dramatic story of the origins and development of the Constitution. The Constitution is presented as a "living document" that has profoundly affected American life.

Storing, Herbert J. *What the Anti-Federalists Were For* (Chicago: The University of Chicago Press, 1981).

This is a concise account of the political ideas of the opponents of the Constitution.

Wood, Gordon S. *The Creation of the American Republic, 1776-1787* (Chapel Hill: University of North Carolina Press, 1969).

This is a comprehensive analysis of the political ideas that shaped the Federal Republic, from the War for Independence to the Constitutional Convention.

CHAPTER II

ORIGINS AND PURPOSES OF THE CONSTITUTION

Overview for Teachers

This chapter includes 12 lessons, which treat the concept of constitution--its origins and purposes in American civilization. The meaning of constitutional government is emphasized and constitutional law is distinguished from other kinds of laws and rules.

Main ideas of the state constitutions written during the War for Independence are treated, as are the Articles of Confederation. Various opinions about the Articles of Confederation are presented in excerpts from primary sources of the years from 1783-1787.

These lessons also deal with certain aspects of the Constitutional Convention and the subsequent contest over ratification. Finally, ideas of proponents and opponents of the Constitution of 1787 are included.

Given the mission of this project, the events of American constitutional history during the 1780's are not treated comprehensively in this book. Rather, lessons in this book may be used to supplement treatments of this period in high school American history and government textbooks. Thus, subjects that are discussed amply in the textbooks are not treated in this group of lessons. Furthermore, topics that do not fit standard curriculum guides and textbooks are not included in this book. The lessons in this book are to be linked to the curriculum to enhance it. It is assumed that the chronological presentations of events in the textbooks provide an appropriate historical context in which to fit these lessons.

List of Lessons in Chapter II

II- 1. What Is A Constitution?

II- 2. Anatomy of Constitutions

II- 3. State Constitutions, 1776-1780

II- 4. The Articles of Confederation (First Constitution of the United States)

II- 5. Opinions About Government Under the Articles of Confederation, 1783-1787

II- 6. Washington's Decision to Attend the Constitutional Convention

II- 7. Decisions About the Presidency at the Constitutional Convention, 1787

II- 8. Decisions About the Constitution at the Massachusetts Convention, 1788

II- 9. Decisions About the Bill of Rights, 1787-1791

II-10. Ideas from the Federalist Papers

II-11. Ideas from Papers of the Anti-Federalists

II-12. Timetable of Main Events in the Making of the Constitution, 1781-1791

II-1. WHAT IS A CONSTITUTION?

Only seven of the nations in the world do not have a written constitution. Constitutions are found in rich countries and poor countries, large countries and small countries, old nations and new ones. In the United States we have one national constitution and 50 state constitutions.

Nearly all constitutions are written, as the Constitution of the United States of America is. A few countries, the United Kingdom of Great Britain, Israel and New Zealand, have unwritten constitutions. The constitution in such countries consists of legislative acts, court decisions and customs never put together in one document. These customs, decisions and laws are thought of as a constitution, even though they are not all written in one document.

The United States Constitution--written in 1787--is by far the world's oldest. Many of the constitutions in operation today have been written since 1960. In the modern world, constitution-making has been a continuing and important activity.

What is a constitution?

A constitution is (1) the supreme law of a land; (2) a framework for government; (3) a legitimate way to grant and limit the power of government officials.

The Constitution Is the Supreme Law

A constitution is the supreme or highest law of the land. For example, there is no law within the United States of America that is higher than the Constitution of the United States. This principle is stated in Article VI of the U.S. Constitution: "The Constitution, and the laws of the United States which shall be made in Pursuance thereof...shall be the Supreme Law of the Land."

All laws, passed either by the Congress in Washington or by state legislatures, must conform to the Supreme Law--the Constitution. Alexander Hamilton explained in The Federalist (#78): "No legislative act contrary to the Constitution, therefore, can be valid."

Read the following items. Are they examples of the Constitution as the supreme law of the land? Explain.

1. The Constitution of the state of Indiana includes no statements that contradict the Constitution of the United States.
2. The legislature of the state of Ohio passed a law that conflicted with the First Amendment to the U.S. Constitution. In a court case involving this law, a federal judge declared the law to be unconstitutional (null and void).

A Constitution Is a Framework for Government

Most national constitutions are general plans of government. They establish a general framework for organizing and operating a government. They are not detailed blueprints for running government on a day-to-day basis. The United States Constitution, for example, is only 7,500 words long. It does not attempt to spell out every detail of how to run our national government. Details that fit the general framework are supplied by people who run the government.

President Woodrow Wilson noted that the U.S. Constitution only outlined the organization and operation of the government. "Here the Constitution's work of organization ends," he said, "and the fact it attempts nothing more is its chief strength."

Wilson said that to include too many details in the Constitution

> ...would be to lose elasticity and adaptability. The growth of the nation and the consequent development of the governmental system would snap asunder a constitution which could not adapt itself to the measure of the new conditions of our advancing society. If it could not stretch itself to the measure of the times, it must be thrown off and left behind, as a by-gone device; and there can be no question that our Constitution has proved lasting because of its simplicity. It is a cornerstone, and not a complete building; or, rather, to return to the old figure, it is a root, not a perfect vine.

As a general framework for government, the Constitution must be interpreted as it is applied to specific cases. For example, the 4th Amendment to our Constitution protects people against "unreasonable searches and seizures" by police or other government officials. But what does "unreasonable searches and seizures" mean? The automobile did not exist in 1787 when the Constitution was written. Does the 4th Amendment allow the police to stop you and search your car?

The Supreme Court often decides such questions in our country. Decisions of the Supreme Court help to fit the Constitution to changing times and circumstances. Because the meaning of our Constitution is constantly being adapted to fit our situation, we call it a "living Constitution."

Decisions by judges, who interpret and apply the Constitution to specific cases, are means for supplying details needed to fill out the general framework of government established by the Constitution. These judicial decisions are constitutional law.

Constitutional law is established by judicial interpretation of the meaning of general phrases in a constitution, such as "due process of law" or "interstate commerce." In the United States, the Supreme Court plays a big role in developing constitutional law. In 1982, for instance, the Court decided that the 4th Amendment ban against "unreasonable search and seizure" allowed police to search the contents of a car without a search warrant.

Statutes are another type of law that fill out the details of a general framework for government. Statutory laws are passed by legislatures. Congress and our 50 state legislatures pass thousands of such laws each year. In our system, federal and state laws must not conflict with the written words of the Constitution or their meaning as interpreted by the courts. The Constitution and the judicial decisions that interpret and apply it (constitutional law) are supreme.

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1. Franklin Roosevelt, 32nd President of the United States said:

> Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.
>
> --First Inaugural Address
> March 4, 1933

   a. Is President Roosevelt's statement an example of the Constitution as a general framework for government? Explain.

   b. Does President Roosevelt's statement agree with the preceding statement of President Wilson? Explain.

2. Read the four examples of laws below. Which are examples of constitutional law? Why?

   a. Up to $100 million dollars will be available from the federal Energy Department for loans, grants and other aid to encourage the development of systems to generate power from the wind. Is this an example of constitutional law? Explain.

   b. The Supreme Court ruled the Constitution did not give President Richard Nixon the authority to withhold evidence requested by a court for use in a criminal trial. Is this an example of constitutional law? Explain.

   c. Buying or selling over 1,000 pounds of marijuana now carries a maximum fine of $125,000 and a possible jail term of up to 15 years. Is this an example of constitutional law? Explain.

   d. A "gag order" limiting what the press could report about pre-trial proceedings in a mass murder case violated the First Amendment guarantee of a free press. Is this an example of constitutional law? Explain.

A Constitution Is a Legitimate Way to Grant and Limit the Power of Government Officials

A constitution grants powers to various types of public officials, who run different parts of the government. For example, Article I of the U.S. Constitution grants certain law-making powers to the Congress. (See Article I, Section 8, for a list of powers granted to Congress.)

The Constitution also specifies certain powers that the Congress may not have. According to Article I, Section 9, of the Constitution, Congress may not take money "from the treasury, but in consequence of appropriations made by law...."

Amendment I limits the power of Congress: "Congress shall make no law...abridging the freedom of speech, or of the press...."

Several other parts of the Constitution grant powers and assign duties to the public officials who lead different parts of the government. Limits are also placed on the powers of these officials, such as President, Justices of the Supreme Court and members of Congress.

The President can send out military forces to put down civil disorder or rebellion, or enforce federal laws at gunpoint, if necessary. The government has power to tax people and to spend the revenues to maintain itself. These and other powers granted to the government can be found in the Constitution. (See Article I, Section 8; Article II, Section 2; and Article III, Section 2.)

However, expressed powers granted to the government have limits, which protect the liberties of the people. For example, while taxes are collected and placed in the U.S. Treasury, any expenditure of tax money must be approved by an act of Congress. In Congress, of course, representatives are chosen by the people in public elections. Amendments I-X protect liberties of the people by denying certain powers to the government.

All government officials must follow the Constitution when carrying out their duties. This means that the President has to obey the Constitution and federal laws made under it. For example, the President may not require that all workers in the executive branch of government attend church services on Sunday in order to keep their jobs. The Constitution says that "no religious test shall ever be required as a qualification to any office of public trust in the United States." (See Article VI.)

In the U.S. Constitution, powers are granted in the name of the people. The government gets its power from the consent of the governed (the people). The powers of government are supposed to be used in the interests of the people. For example, the Preamble to the U.S. Constitution says: "We the People of the United States...do ordain and establish this Constitution for the United States of America."

The Constitution of the United States was written and approved by representatives of the people, who were selected to act in the name of the people. Granting certain powers to government in the name of the people is a way of giving legitimacy to the government. A legitimate grant of powers seems justified or right. It is viewed as legal and proper. Thus, it is likely to be acceptable to most of the people.

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1. Alexander Hamilton wrote in The Federalist (#52) that

   > ...the House of Representatives should have an immediate dependence on and an intimate sympathy with the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectively secured.

   What does Hamilton's statement have to do with the legitimate granting of power to a government?

2. Article V of the U.S. Constitution says: "Amendments to this Constitution...shall be valid...when ratified by the legislatures of three-fourths of the several States...."

   What does the preceding statement indicate about the legitimate granting of power to the government?

3. People in the United States have certain freedoms and rights--civil liberties--which are protected by law. Certain civil liberties are part of the main body of the Constitution. For example, Section 9 of Article I provides a list of actions Congress could not take, such as suspending the privilege of the writ of habeas corpus (prevents someone from being held in jail without being charged with a crime).

   Is the preceding paragraph an example of legitimate limits on the power of government? Explain.

What Is Constitutional Government?

Nearly all countries of the world have a written constitution. Yet not all have constitutional government. Constitutional government means government in which a constitution clearly places recognized and widely accepted limits on the powers of those who govern. Thus, constitutional government means limited government and the rule of law.

The United States, Canada and Great Britain have constitutional government. The constitutions in those countries spell out limits on the powers of government that are practiced in daily political life. In these countries, the rule of law applies. That is, the government and its officials are seen as under, not above, the constitution and other laws. The leaders of the government have to follow the laws as other citizens do. Not even a President or Prime Minister can ignore the constitution. If so, the President or Prime Minister can be removed from office in a legal and orderly way.

The Soviet Union and China have written constitutions. But they do not have constitutional government. Why? Neither the people nor the written constitutions of those countries have any real check on the power of government. Government in those countries is not limited by their constitutions.

Article 55 of the constitution of the Soviet Union and article 87 of the constitution of China, for example, both claim to guarantee freedom of speech. Yet in both countries there is little freedom of speech. Newspapers, books, radio and television are closely controlled by leaders of the government. And citizens who criticize government policy are often punished for speaking out.

A joke popular among citizens in Russia shows how many Russians feel about the gulf between the guarantees in their constitution and the actual behavior of government officials. The joke goes like this:

> Armenian Radio asks: What is the difference between a good constitution and an excellent constitution?
>
> Answer: A good constitution guarantees freedom of speech, while an excellent constitution guarantees freedom after speech.

An effective constitutional government is neither too powerful nor too weak. Rather, the government should have all powers necessary to perform tasks the people expect of it; at the same time, limits should be placed on how the government's powers can be used, so that the liberties of the people are not destroyed.

In 1861, at the start of the Civil War, President Abraham Lincoln asked a critical question about government and liberty. He said: "Must a government, of necessity, be too strong for the liberties of its own people, or too weak to maintain its own existence?"

A government with too much power may be able to enforce laws and keep order. But it may abuse the rights of citizens. By contrast, a government with too little power may not be able to protect the security, or safety or rights of citizens; thus, it may not be able to survive.

Lincoln believed that a government should be strong enough to enforce laws and keep order; at the same time it should be limited sufficiently to protect the rights of citizens. Lincoln believed in constitutional government, which means that the power of rulers is limited by laws. Rulers in a constitutional government must perform their duties according to laws accepted by those whom they rule.

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1. Which of the following items are examples of constitutional government? Mark an "X" in the spaces next to each correct item. Be prepared to explain your answers.

____ a. The police can't enter your house without a warrant to look for stolen property.

____ b. John Doe was arrested five years ago. He was never charged with a crime. Last week, he was released from prison.

____ c. Citizens ought to be able to pick and choose which laws they'll obey and which ones they'll ignore.

____ d. The majority of citizens ought to be able to vote to take away the rights of minority groups. After all, government by the people should mean that the majority can do whatever it wants to do.

____ e. People have a legitimate right to criticize the President and other leaders of the government.

2. James Madison wrote about constitutional government in *The Federalist* (#51). Madison said:

> In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Does the statement by Madison agree with the preceding views of Abraham Lincoln about an effective constitutional government? Explain. Do you agree with Madison? Why?

Reviewing and Applying Knowledge About the Idea of a Constitution

1. Which of the following is an example of constitutional law? Make an "X" next to the correct items. Be prepared to explain your answers.

____ a. The City Council of Zenith City passed an ordinance (law) that bans smoking in public buildings.

____ b. The U.S. Supreme Court decided in 1982 that the children of people who entered the country illegally had the right to attend public schools. This decision was based on the court's interpretation of the "equal protection of the laws" clause of the 14th Amendment to the U.S. Constitution.

____ c. The President has the power to veto bills passed by a majority of both Houses of Congress.

____ d. The General Assembly of Indiana passed a law granting several million dollars to the state universities to construct new buildings.

2. Which of the following is an example of constitutional government? Make an "X" next to the correct items. Be prepared to explain your answers.

____ a. King Louis XIV of France said that he ruled by "Divine Right." According to King Louis XIV, only God could limit his power as a ruler.

____ b. In Czechoslovakia, there is a fine written constitution that guarantees government by the people. There is a bill of rights that protects free speech. However, the top leaders of the Communist Party make all the important decisions, even though some of them do not hold a government office. People who want to get ahead do not speak out to criticize the Communist Party.

____ c. In the United Kingdom of Great Britain, laws are made according to a majority of members in a national parliament. Laws are enforced by a Prime Minister, who is the leader of the party with most members in the parliament. Voters elect the members of parliament, including the Prime Minister.

3. It is said that the U.S. Constitution provides for "a government of laws, not of men." Is this an example of constitutional government? Explain.

4. Russia has a written constitution. Explain why it does not have constitutional government.

5. Justice Felix Frankfurter said:

   "The meaning of 'due process' and the content of terms like 'liberty' are not revealed by the Constitution. It is the Justices who make the meaning."

   a. Would Frankfurter see the Constitution as a blueprint or a general framework for government? Explain.

   b. Is Frankfurter describing the making of constitutional law or statutory law? Explain.

6. Provide one example of each of these characteristics of a constitution:

   a. the supreme law of a land;

   b. a framework for government;

   c. a legitimate way to grant and limit powers of government officials.

LESSON PLAN AND NOTES FOR TEACHERS

II-1. What Is A Constitution?

Preview of Main Points

The theme of this lesson is the concept of constitution. Three main characteristics of a constitution are treated: (1) a constitution is the supreme law of the land; (2) a constitution is a framework for government; (3) a constitution is a legitimate way to grant and limit powers of government officials. Constitutional law is distinguished from statutory law. Finally, examples of constitutional government are discussed.

Connection to Textbooks

This lesson can be used to introduce textbook chapters about the Constitutional Convention. The lesson could enrich chapters in government and history texts where only sketchy definitions of the meaning of constitution and related concepts are presented.

Objectives

Students are expected to:

1. identify main characteristics of a constitution;
2. use the main characteristics, which constitute a simple definition of a constitution, to organize and interpret information;
3. distinguish between constitutional law and statutory law;
4. identify examples of constitutional government;
5. use the concept of constitution, constitutional law and constitutional government to interpret ideas and information.

Suggestions for Teaching the Lesson

This is a concept learning lesson. It follows a teaching strategy known as "rule-example-application." In this strategy, a concept--such as constitution--is presented systematically through the use of definitions (rules) and examples. Students are asked to apply the definitions presented to the organization and interpretation of information. Students are involved in an "application exercise" at the end of each main section of the lesson and at the end of the lesson. These "application exercises" are tests of student ability to use the ideas presented in the main body of the lesson.

Opening the Lesson

- Remind students that to understand American history (or American government) without understanding the meaning of constitution and the idea of constitutionalism is like trying to follow a football game without knowing the purpose and rules of the game.
- Explain that this lesson is designed to help them learn the meaning of constitution, constitutional law and constitutional government.
- Initiate discussion by asking students to respond to the main question of the lesson: What is a constitution? Conduct a tentative, speculative discussion as a way to focus attention and arouse curiosity about the remainder of the lesson.

Developing the Lesson

- Ask students to read the lesson and to complete the four application exercises at the end of each of the four sections of the lesson.
- Conduct a discussion of the four application exercises. Use this discussion to determine the extent to which students understand the concepts of constitution and constitutional government. Try to correct misunderstandings that may be revealed by students in this discussion.

Concluding the Lesson

- Conduct a discussion of the questions that appear at the end of the lesson. These questions follow this heading: "Reviewing and Applying Knowledge About the Idea of a Constitution."
- Use this learning activity as a final gauge of the extent to which students comprehend the concepts of constitution, as presented in this lesson.

II-2. THE ANATOMY OF CONSTITUTIONS

The world is full of constitutions! Today most of the world's nations have written constitutions. The U.S. Constitution is one of these.

Each nation's constitution describes its plan for government. How are constitutions put together? What are the basic parts of a constitution? How does ours compare to the others?

Statement of Goals

Nearly all constitutions have an introduction. This introduction is often called a preamble. A preamble sets forth the goals and purposes to be served by the government described in the constitution. Here are some examples.

- The 1977 Constitution of the Soviet Union proclaims: "The supreme goal of the Soviet state is the building of a classless society."
- The Constitution of France says, "The French people solemnly proclaims its attachment to the Rights of Man."

A preamble may also describe the source of a government's authority. The German Constitution states that, "The German people...have enacted, by virtue of their constitutional power, this Basic Law for the Federal Republic of Germany."

Answer these questions.

1. What purpose does a preamble serve? ____________________

____

2. Read the Preamble of the U.S. Constitution. The Preamble names ______________ as the source of authority for our government.

3. List the six major purposes of American government set in the Preamble to our Constitution.

   1. ________________________________
   2. ________________________________
   3. ________________________________
   4. ________________________________
   5. ________________________________
   6. ________________________________

Framework of Government

The main part or body of a constitution spells out the basic plan for a nation's government. In a federal system like ours the body of the constitution may also describe how the national government relates to state or other levels of government.

The key building blocks of the body of a constitution are often called articles. Articles define the specific features and details of a government. The French Constitution has 92 Articles. Here are two of them.

> Article 6. The President of the Republic shall be elected for seven years by direct universal suffrage (vote).
>
> Article 24. Parliament consists of a National assembly and the Senate.
>
> The Deputies of the National Assembly shall be elected by direct suffrage (vote).
>
> The Senate shall be elected by indirect suffrage.

Articles are usually grouped under some type of organizers. These are often called "chapters" or "titles." Organizers separate the major parts of a constitution.

The 92 Articles of the French Constitution, for example, are organized under 15 "titles." The titles cover such topics as:

Title II. The President of the Republic (contains 15 Articles).

Title IV. The Parliament (contains 10 Articles).

The Russian Constitution has 174 Articles divided into 21 chapters. The German Constitution has 182 Articles organized into 12 chapters.

In the U.S. Constitution, the key building blocks are called "Sections." These Sections do the same job as articles in other constitutions. Our Constitution has a total of 54 Sections -- 21 are grouped under seven organizers called "Articles" and 33 are grouped under Amendments to the

Constitution.* Sections are sometimes further divided into clauses in edited versions of the U.S. Constitution. Here are two examples of sections in the Constitution of the United States.

> Section 1 (in Article I). All legislative powers herein granted shall be vested in a Congress of the United States.
>
> Section 3 (in Article III). Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

Use a copy of our Constitution to answer these questions.

1. Match the topics listed in Column B with the correct Article listed in Column A.

A		B
Article I	_____	a. Judicial Branch
Article II	_____	b. Provisions for Amendment
Article III	_____	c. Legislative Branch
Article IV	_____	d. National Supremacy
Article V	_____	e. Relations of States
Article VI	_____	f. Executive Branch
Article VII	_____	g. Ratification of Constitution

2. Which Article contains the greatest number of sections?

   ____

3. Look at the Sections under Article II. Which Section deals with the same subject covered by Article 6 of the French Constitution? ______________________________

---

*Some copies of the U.S. Constitution include more than a total of 54 sections. This is the result of editorial changes to the original copy. The engrossed copy of the Constitution in the National Archives has 21 sections in the seven Articles, which constitute the main body of the document. The original copies of the 26 Amendments include 33 sections.

Changing a Constitution

Times change and so do constitutions. Most constitutions spell out procedures for how they can be changed legally or amended. Here is an example from the French Constitution.

> Article 89. The initiative for amending the Constitution shall pertain both to the President of the Republic, on the proposal of the Prime Minister, and to the members of Parliament.

Article V describes how our Constitution can be amended. Read Article V and answer these questions.

1. Both Houses of Congress must propose an amendment started in Congress. TRUE FALSE
2. State legislatures in at least half the states may also propose an amendment. TRUE FALSE
3. All proposed amendments must be ratified by the states. TRUE FALSE

Lesson Checkup

1. Table 1, on page 5, compares the organization of several other constitutions with the U.S. Constitution.
    - a. Which two constitutions are the longest? ______________ ____________________________. Why? ____________________ ____
    - b. Which constitution is the shortest? ________________
    - c. What are the key building blocks of the U.S. Constitution called? ___________________________________
2. Table 2, on page 5, lists the major organizers or titles of the French Constitution.
    - a. Which Article of the U.S. Constitution would seem to cover the same topic as Title II? __________________
    - b. Which Article of the U.S. Constitution would correspond to Title IV? ______________________________
    - c. Which Article of the U.S. Constitution would correspond to Titles VII and VIII? ______________________
    - d. Which Article of the U.S. Constitution would correspond to Title XIV? ______________________________

TABLE 1
The Structure of Constitutions

	CONSTITUTION			
KEY PARTS	United States	Soviet Union	France	Germany
ORGANIZER	7 Articles and 26 Amendments	21 Chapters	15 Titles	12 Chapters
KEY BUILDING BLOCKS	54 Sections	174 Articles	92 Articles	182 Articles

TABLE 2
The French Constitution

	PREAMBLE
Title I.	ON SOVEREIGNTY
II.	THE PRESIDENT OF THE REPUBLIC
III.	THE GOVERNMENT
IV.	THE PARLIAMENT
V.	RELATIONS BETWEEN PARLIAMENT AND THE GOVERNMENT
VI.	TREATIES AND INTERNATIONAL AGREEMENTS
VII.	THE CONSTITUTIONAL COUNCIL
VIII.	THE JUDICIARY
IX.	THE HIGH COURT OF JUSTICE
X.	THE ECONOMIC AND SOCIAL COUNCIL
XI.	TERRITORIAL UNITS
XII.	THE COMMUNITY
XIII.	AGREEMENTS OF ASSOCIATION
XIV.	AMENDMENT
XV.	TEMPORARY PROVISIONS

LESSON PLAN AND NOTES FOR TEACHERS

II-2. The Anatomy of Constitutions

Preview of Main Points

This lesson uses examples from foreign (Soviet, French and German) constitutions and the U.S. Constitution to teach the basic structural features of constitutions. In each section of the lesson, students use concepts about constitutional structure to identify key parts of the U.S. Constitution. Students are also given the opportunity to think about how the structure of our Constitution is like other constitutions and how it is different.

Connection to Textbooks

This lesson provides a more in-depth instruction about the meaning and organization of constitutions than is available in textbooks. It also contains comparative material on foreign constitutions that can enrich textbook treatments focusing solely on the U.S. Constitution.

Objectives

Students are expected to:

1. identify the purposes served by a preamble in constitutions;
2. identify the major structural features and organizing devices used in constitutions;
3. use the concepts of Articles and Sections to locate key parts of the U.S. Constitution;
4. know that constitutions contain procedures for amendment;
5. use information in tables to compare the organization of the U.S. Constitution with foreign constitutions.

Suggestions For Teaching The Lesson

Opening The Lesson

- You might begin by asking students what the United States, Chile, India, France, Germany and the Soviet Union have in common. Answer: each nation has a written constitution.

- Explain the purpose of this lesson is to help students learn more about our Constitution by looking at how all constitutions are put together -- at the anatomy of constitutions.

Developing The Lesson

- Distribute copies of the lesson -- "Anatomy of Constitutions" -- to students. Instruct them to read the material and complete the questions in the lesson itself.

  You may wish to have students stop at the end of each section of the lesson to discuss their responses to the questions, or they may work straight through all the material.

Concluding The Lesson

- Distribute copies of Tables 1 and 2 to each student or display the Tables with an overhead or opaque projector.
- Have students use information in the tables to answer the questions in the Lesson Checkup. Conduct a class discussion which gives students an opportunity to review their responses to the material.

Suggested Reading

Samuel Edward Finer, Five Constitutions: Contrasts and Comparisons (New York: Penguin Books, 1979). 346 pages, paperback.

This paperback presents the full texts of the constitutions of the U.S., the USSR (1936 and 1977 versions), the Federal Republic of Germany and the Fifth French Republic. The author discusses in clear language how and why to study constitutions. He presents a clear system for comparing the provisions of each constitution.

This is an excellent reference for the teacher. It would be readily usable by students doing additional research on the U. S. and foreign constitutions.

II-3. STATE CONSTITUTIONS, 1776-1780

In 1776, the United States of America declared their freedom and independence. The Declaration of Independence said:

> "Representatives of the United States of America, in General Congress, Assembled...solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States...and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do...."

Origins of State Constitutions

Between 1776 and 1780, eleven of the thirteen new, independent American states asserted the right to make new constitutions. Two states--Connecticut and Rhode Island--used the colonial charters of 1662 and 1663 as their constitutions; however, they deleted all references to the British government.

All of the new constitutions except one--the Massachusetts Constitution of 1780--were written by representatives of the people (revolutionary congresses) called together for the purpose of establishing new state governments; they did not submit their work to voters of their states to be ratified, rejected or amended. Rather, when finished, they merely proclaimed the new constitutions to be in effect. This happened in eight states in 1776: New Hampshire, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, and South Carolina. The same procedure was followed in 1777 in New York and Georgia.

In Massachusetts, a constitutional convention was called in 1779 for the sole purpose of writing a plan for the basic structure of government. This convention was attended by delegates elected by eligible voters of the state. After the constitution was written, it was submitted to the voters of the state to be ratified. This method of making a constitution was the forerunner of procedures used in 1787-88 to draft and ratify the Constitution of the United States.

In 1776, the General Court (state legislature) of Massachusetts proceeded to make a new constitution as most of the other new states had done. That is, members of the General Court wrote and approved a new constitution. When sent to the people of the state for ratification in 1778, however, the constitution was rejected by a vote of five to one.

Opponents of the new constitution objected especially to the procedure for writing the document. They referred to resolutions of October 22, 1776, by representatives of the town of Concord. These Concord resolutions said:

> "That the Supreme Legislative, either in their proper capacity or in joint committee, are by no means a body proper to form and establish a constitution or form of government; for reasons following. First, because we conceive that a Constitution in its proper idea intends a system of principles established to secure the subject in the possession and enjoyment of their rights and privileges, against any encroachments of the governing part. Second, because the same body that forms a constitution have of consequence a power to alter it. Third, because a Constitution alterable by the Supreme Legislative is no security at all to the subject against any encroachment of the governing part on any, or on all of their rights and privileges."

In 1779, the General Court asked the people of the state to decide in town meetings if they wanted to convene a constitutional convention. The proposal was approved and delegates to the convention were elected. The delegates drafted a constitution, which was approved by a majority in excess of two-thirds of the towns of the state in 1780.

The making of the Massachusetts Constitution was a prime example of self-government and popular sovereignty. The government was framed by a convention that derived its authority directly from the people. Then the people ratified the constitution written by delegates that they had chosen in a convention that they had approved. Thus, the basic and supreme law of the state was made directly in the name of the state's people, who would be governed by it.

Main Elements of Government in the Massachusetts Constitution of 1780

What kind of government was framed by the people of Massachusetts in 1780? Here are some of the main elements of the state's constitution.

1. A Preamble set the main purposes of government. It said that the government was formed by the people to help them guard their civil rights and liberties--"to furnish the individuals who compose it [the people of the state] with the power of enjoying in safety and tranquility their natural rights...."

"[The Constitution] is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good...."

2. Powers of government were separated into three parts or branches: (1) a legislature to make laws, (2) an executive department, headed by a governor, to carry out and enforce laws, and (3) a judicial department--law courts and judges--to apply and decide the meaning of the law in cases brought before the state courts.

Article XXX of the Massachusetts Constitution said:

> "In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men."

3. Protections against the acquisition of too much power, by one part or branch of government at the expense of the other parts, were provided.

- The legislature was bicameral (divided into two houses); proposed laws (bills) had to be passed by a majority in both houses to become laws. Thus, one house could check the other.
- The governor could veto (reject) a bill passed by both houses of the legislature. Thus, the governor could check the legislature.
- A governor's veto could be overturned by a two-thirds vote in both houses of the legislature.
- Judges were appointed by the governor and could stay in office for life, as long as they behaved properly. Thus, they could make decisions without pressure from the executive and legislative branches of government.

4. The people (eligible voters) elected the governor and legislators for fixed terms of office. The governor and members of the state legislature were elected by eligible voters of the state to serve one-year terms of office.

Article IX of the Massachusetts Constitution said: "All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employment."

To be eligible for election to the positions of governor and state legislator, a person had to own property worth a certain amount of money.

To be eligible to vote, a person had to be a taxpayer and property owner.

Only white male adults could vote and hold public office.

5. People were taxed only with the consent of elected representatives in government. Article XXIII said: "No subsidy, charge, tax, impost, or duties ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people or their representatives in the legislature."

6. Certain liberties and rights of the people were protected. The rights of the people to free speech and press were guaranteed. So were the rights of people accused of crimes; they were guaranteed the right of trial by a jury of their peers, and to be tried according to established legal procedures.

Article I said:

> "All men are born free and equal, and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness."

7. The rights and powers of the state of Massachusetts were declared. All powers not specifically granted to the government of the United States were to be retained by the state government and people of Massachusetts.

Article IV said:

> "The people of this commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America, in Congress assembled."

Patterns of Government in the Original Thirteen States

How similar was the Massachusetts Constitution to the constitutions of the other states? Was the state government framed by the Massachusetts Constitution very different from the governments established by the other state constitutions?

Following are several general statements about the state constitutions written between 1776-1780.

1. Eleven of the states had a bicameral (two-house) legislature. Laws had to be approved by a majority in both houses; two had a unicameral (one-house) legislature.

2. The governor's term was limited to one year in nine of the thirteen states as a way of limiting the chief executive's power. In no state was the governor's term more than three years.

3. In eight states, the governor was elected by the state legislature. The governor was elected by eligible voters in the five other states.

4. In nine states, the governor had no power to veto acts of the legislature.

5. In eight states, the state judges were appointed for life on condition of good behavior.

6. In every state, a man had to own property, which was worth a significant amount of money, in order to be eligible for election to the positions of governor or legislator. Only white male adults were able to hold positions in government.

7. In every state, only white male adult taxpayers could vote. In most states, there was also a property ownership qualification for voting.

8. Most state constitutions included a Bill of Rights, which guaranteed the peoples' freedoms and rights. These included freedom of speech and the press, the right of people accused of crimes to a trial by jury and to judgment in terms of established legal procedures, and freedom from unreasonable searches and seizure of property by government officials.

Using Knowledge About State Constitutions, 1776-1780

1. Why were state constitutions written between 1776-1780?

2. How were most of the state constitutions written and ratified?

3. What was different about the way the Massachusetts Con--stitution of 1780 was written and ratified?

4. Review the Concord Resolutions of October 22, 1776. What reasons are presented in this document in support of the way the Massachusetts Constitution of 1780 was written and ratified?

5. Which of these statements about the state constitutions of 1776-1780 can be supported with evidence in this lesson? Place an "X" in the space next to each correct statement. Be prepared to explain your responses.

   _____a. A minority of the adult population in each state was eligible to hold the positions of governor or legislator.

   _____b. The governor of Massachusetts had more power than the governors of most other states.

   _____c. In most states, a proposed law had to be passed by a majority in each of two houses of the legislature.

   _____d. In most states, the governor was elected by the qualified voters of the state.

   _____e. The Massachusetts Constitution was the only one that had a Bill of Rights.

   _____f. Powers of government in Massachusetts were separated into three branches: legislative, executive, and judicial.

   _____g. In Massachusetts, the governor could veto acts passed by the legislature.

   _____h. The legislature in Massachusetts was unicameral.

   _____i. Main purposes of the government in Massachusetts were to protect the safety, property rights, and civil liberties of the people.

   _____j. In Massachusetts, people were expected to pay taxes that had been established by a majority vote of their representatives in the legislature.

6. How different was the Massachusetts Constitution of 1780 from the patterns of government established by the other state constitutions?

7. Article XXX of the Massachusetts Constitution of 1780 said that the state should have "a government of laws and not of men."

   a. What is the meaning of this statement?

   b. Why is this idea important to people who want to enjoy freedom and justice under their government?

8. Article IV of the Massachusetts Constitution of 1780 pertains to the rights and powers of the state government. Review Article IV.

   a. What is the main idea of Article IV?

   b. What might have been the reasons for including Article IV in the Constitution of 1780?

   c. Would Article IV be likely to contribute to or detract from the power and authority of the central government of the United States of America? Explain.

LESSON PLAN AND NOTES FOR TEACHERS

II-3. State Constitutions, 1776-1780

Preview of Main Points

This lesson treats the origins, purposes, and main features of the thirteen state constitutions of the revolutionary period. The Massachusetts Constitution of 1780 is highlighted.

Connection to Textbooks

State constitutions of the revolutionary era are discussed briefly, if at all, in most high school American history or government textbooks. Teachers wanting to stress this topic can use this lesson as a supplement to American history textbook chapters on the American Revolution. The lesson might also be used to enrich discussions of the meaning of constitutionalism in American government textbooks.

Objectives

Students are expected to:

1. know about the origins of the thirteen state constitutions of the revolutionary period;
2. explain the historical significance of the means used to draft and ratify the Massachusetts Constitution of 1780;
3. identify main patterns of government established by the original state constitutions;
4. identify main ideas in the Massachusetts Constitution of 1780.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Write these terms on the chalkboard: elections and voting, civil liberties, executive powers, legislative powers, judicial powers. Ask students to speculate about how the original state constitutions treated these aspects of government. Use this brief discussion as a way to focus the attention of students and to stimulate their curiosity about the rest of the lesson.

- Inform students that many of the main features of the original state constitutions became part of the U.S. Constitution of 1787.

Developing the Lesson

- Ask students to read the lesson.
- Assign items 1-5 in the section titled "Using Knowledge About State Constitutions, 1776-1780."
- Conduct a class discussion of items 1-5.

Concluding the Lesson

- Assign items 6-8 at the end of the lesson. Two of the items, 7 and 8, require students to interpret part of Article XXX and Article IV of the Massachusetts Constitution of 1780.
- Discuss items 6-8 with students. Emphasize the significance of Article IV which was a typical declaration of states' rights that appeared in the state constitutions of the era. Point out that this view of states' rights was included in the Articles of Confederation. It was one of the issues that divided Federalists and anti-Federalists during the arguments about ratification of the Constitution in 1787-1788.

Answers to Item 5

X a.
X b.
X c.
d.
e.
X f.
X g.
h.
X i.
X j.

II-4. THE ARTICLES OF CONFEDERATION (FIRST CONSTITUTION OF THE UNITED STATES)

The Articles of Confederation were the constitution of the United States from 1781 through 1788. This constitution was a written plan for government, which included a Preamble and thirteen Articles or main parts.

Origins and Purposes of the Articles of Confederation

Thirteen American states, which had been British colonies, declared their independence in 1776. The temporary government of these thirteen United States of America was the Second Continental Congress.

The First Continental Congress was formed in 1774 by representatives from each of the thirteen colonies in order to register formal protests against the British government. The Second Continental Congress convened in May of 1775, after the outbreak of fighting between the Americans and British. This group of representatives from each colony issued the Declaration of Independence in 1776. The Second Continental Congress also conducted the War for Independence.

In 1777, the Continental Congress appointed a committee to draft a plan for government of the thirteen United States of America. The committee, headed by John Dickinson, wrote the Articles of Confederation. These Articles became the first constitution of the United States in March of 1781, when Maryland became the last of the thirteen states to ratify (approve) them.

The Articles of Confederation set terms of union between thirteen American states. The Preamble said that the thirteen states "agree to certain articles of confederation and perpetual union."

The Preamble indicated that the confederation established by these Articles was to be a union of equal states, which would last forever. This union was established to increase the power of each state to guard against attacks by foreign powers. It seemed to be primarily an alliance of thirteen separate states for the purpose of defense against outsiders rather than a fusion of these states to form a new nation-state.

Leaders of the thirteen states seemed unwilling to grant very much power to a central government. Memories of the recent rebellion against the British government were too strong. They feared the creation of a powerful new central government, which might infringe upon their civil liberties and rights.

Main Features of Government Under the Articles of Confederation

Article I says that the name of the confederation "shall be the United States of America."

Article II is a strong statement of states' rights. It says: "Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in congress assembled."

This means that the central government could have only those few powers listed exactly in the Articles of Confederation. All other powers of government were to belong to the states. State sovereignty was to be retained; this meant that each state would have power to govern affairs within its territory without interference from the central government.

Article III declares that the Confederation is a "firm league of friendship" to provide for the common defense and general welfare of the states belonging to it.

Article IV required each state to recognize and respect judicial proceedings and public records of the other states in the Confederation. It also provided for unrestricted travel in the states of the Confederation by the people of each state.

Article V established a Congress as the basic part of the central government. Each state was free to decide how to select its representative to Congress. The term of office was one year. Each state could have from two to seven representatives, and each state paid its own delegates. However, regardless of the size of a state's delegation, each state had only one vote in the Congress. Thus, a smaller state like Delaware was equal in voting power to a larger state like Pennsylvania.

Article VI included several limitations upon the states. For example, no state was permitted--"without the Consent of the united states in congress assembled"--to:

- exchange ambassadors with other nations;
- make treaties or alliances with other states or nations;
- impose taxes on imports that would violate treaties made by the "united states in congress assembled" and a foreign power;
- maintain vessels of war;

- go to war.

Each state was to "always keep up a well regulated and disciplined militia, sufficiently armed and accoutered...."

Article VII set forth rules for the appointment of military officers and the raising of armed forces within the states. It says: "When the land-forces are raised by any State for the common defence, all officers of or under the rank of colonel, shall be appointed by the Legislature of each state respectively by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment."

Article VIII provided that costs of war or other expenses having to do with the "general welfare, and allowed by the united states in congress assembled" should be paid out of a "common treasury" that was to be "supplied by the several states." Money in the "common treasury" was to be supplied by the states from taxes paid by the people of each state. However, there was no way to force the states to provide money for the "common treasury."

Article IX specified the "sole and exclusive" powers of Congress. It said that the Congress alone could have certain powers and no others. Other powers of government were to be exercised by each state within the state's boundaries. Congress only had power to:

- declare war and make peace;
- exchange ambassadors with foreign powers;
- make treaties and alliances with foreign powers;
- arbitrate certain kinds of disputes between two or more states;
- regulate the value of money;
- borrow money;
- establish a postal system;
- manage relationships with Indian tribes;
- regulate weights and measures;
- maintain a navy and military troops requested from the states;

- appoint executive committees or departments to manage the affairs of the United States under the direction of Congress. (Departments of War, Finance, and Foreign Affairs were established; so was the office of Post Master General to manage the postal services.)

- appoint one member of Congress to serve as a President, or presiding officer, at the meetings of Congress. (This person could serve for a term of one year and had power only to manage the meetings of Congress.)

These few powers granted to Congress were further limited by the provision that certain important powers could be carried out only after approved by nine of the thirteen states. Other actions required only a majority vote (7) of the thirteen states.

According to Article IX: "The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy unless nine states assent to the same, nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled."

Article X provided for a "Committee of the States" to carry out the powers of Congress whenever the Congress was not in session. The "Committee of the States" consisted of one delegate from each state. The "Committee of the States" could take actions only with the approval of nine states.

Article XI said that Canada could join the Confederation on equal terms with the other states. No other colony could join the Confederation "unless such admission be agreed to by nine States."

Article XII pledged that the United States would take responsibility for the debts of the Continental Congress, which were incurred before establishment of the Confederation.

Article XIII required every state to obey the decisions of Congress "on all questions which by this confederation are submitted to them." The Articles of Confederation were not to be violated by any state of the union. Furthermore, no amendment could be made to the Articles of Confederation unless the legislatures of every state agreed to the change.

Reviewing and Interpreting the Articles of Confederation

1. Identify the correct statements in the following list. Be prepared to explain your answers. Place a check mark in the space next to each correct statement.

    ____ a. The Articles of Confederation were created to declare the independence of the United States of America.

    ____ b. The Articles of Confederation did not take effect until ratified by thirteen states.

    ____ c. The Articles of Confederation were ratified in 1777.

    ____ d. The Articles of Confederation established terms under which thirteen separate states would become the United States of America.

    ____ e. The Confederation was created by delegates who directly represented the American people.

    ____ f. The Articles of Confederation were proposed and written by members of the Second Continental Congress.

    ____ g. The Articles of Confederation included a Preamble, thirteen Articles, and a Bill of Rights.

    ____ h. By ratifying the Articles of Confederation, the governments of the thirteen states gave up most of their powers.

    ____ i. The United States government included a Congress, which was to make laws, and a Chief-Executive, which was to enforce laws within the thirteen states.

    ____ j. Americans wanted to limit the powers of their central government, because of their recent experiences with the British government.

2. Read each of the following statements. Decide whether or not each statement describes an aspect of government under the Articles of Confederation. If so, answer YES. If not, answer NO. Circle the correct answer under each statement.

Identify the number of the Article or Articles that support(s) your answer. Write this information in the blank, which is part of each item.

a. Congress could ask the states to supply money to pay its expenses, but there was no way to force the states to pay.

YES NO Article #________

b. Congress had power to declare war, but only if nine states agreed.

YES NO Article #________

c. Business of the United States government was to be carried out by the "Committee of the States" during periods when Congress was not meeting.

YES NO Article #________

d. The Congress could establish executive committees and departments to manage U.S. government business.

YES NO Article #________

e. States with more people had more representatives and votes in Congress than did states with less people.

YES NO Article #________

f. Congress could expand its powers if necessary to deal with a serious problem confronting the United States.

YES NO Article #________

g. Five of the thirteen states could stop the United States government from making a treaty that was favored by the other eight states.

YES NO Article #________

h. An amendment could be made to the Articles of Confederation only if two-thirds of the states agreed to it.

YES NO Article #________

i. Every state was supposed to obey decisions of Congress that were made in agreement with the Articles of Confederation, but there was no way to force a state to obey.

YES NO Article #________

j. All the states were supposed to cooperate to resist attacks against any one of them.

YES NO Article #________

k. No state was to make a treaty with a foreign power without the consent of Congress.

YES NO Article #________

l. Every power not granted specifically to the states was to be retained by Congress.

YES NO Article #________

3. Why was it so difficult for Congress to pass laws under the terms of the Articles of Confederation?

4. Why was it difficult or impossible for the government of the United States to enforce laws under the terms of the Articles of Confederation?

5. Why was it difficult or impossible for the government of the United States, under the Articles of Confederation, to raise money to pay its expenses?

6. Why was it difficult or impossible for the government of the United States, under the Articles of Confederation, to settle disputes between the states or between citizens of different states?

7. (a) What were three important weaknesses of the Articles of Confederation as an effective plan for government of the United States?

(b) Which of these weaknesses was most significant in causing the failure of government under the Articles of Confederation?

(c) What amendments might have been added to the Articles to make this plan for government more effective? Prepare at least three amendments and explain how they might have remedied defects in the Articles of Confederation.

LESSON PLAN AND NOTES FOR TEACHERS

II-4. The Articles of Confederation (First Constitution of the United States)

Preview of Main Points

This lesson describes briefly the origins and purposes of the Articles of Confederation, the first constitution of the United States of America. The main emphasis, however, is on the main features of the thirteen Articles as a plan for government.

Connection to Textbooks

All high school textbooks in American history and government include sections about government under the Articles of Confederation, which can be supplemented with the information, ideas, and activities of this lesson. This lesson provides opportunities to elaborate upon the content of textbook chapters. Furthermore, the activities and questions at the end of the lesson challenge students to apply ideas and information about the Articles of Confederation.

Objectives

Students are expected to:

1. explain the origins and main purposes of the Articles of Confederation;
2. demonstrate knowledge of main features of the Articles of Confederation;
3. practice skills in locating, comprehending, and interpreting ideas and information in a document, the Articles of Confederation;
4. identify and explain weaknesses of the Articles of Confederation as a plan for government of the United States.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Ask students to tell what they know about the Articles

of Confederation. Ask them these questions: (1) What is it? (2) Why was it created? (3) What were its main features? (4) Why did it have these characteristics? Tell students that this lesson presents information that pertains to the preceding questions.

Developing the Lesson

- Ask students to read the sections of this lesson about the origins and purposes of the Articles of Confederation and main features of the Articles.
- Assign the activities and questions at the end of the lesson, items 1-6.
- Conduct a class discussion of answers to items 1-6.

Concluding the Lesson

- Assign item 7 at the end of the lesson.
- Divide the class into small groups of from 5-7 students.
- Ask each group to complete the three parts of item 7 and to be prepared to report responses to the class.
- Call on members of different groups to report their responses to 7a, 7b, and 7c. Ask other students to listen carefully and to either agree or disagree with the reports.

Suggested Reading

Jensen, Merril. The Articles of Confederation (Madison: The University of Wisconsin Press, 1940).

Pleasant, Samuel A. The Articles of Confederation (Columbus, Ohio: Charles E. Merril Publishing Company, 1968).

Answer Sheet, Items 1 and 2

1. a. false
   b. true
   c. false
   d. true
   e. false
   f. true
   g. false
   h. false
   i. false
   j. true

2. a. YES, Article VIII
   b. YES, Article IX
   c. YES, Articles IX and X
   d. YES, Article IX
   e. NO, Article V
   f. NO, Articles IX and II
   g. YES, Article IX
   h. NO, Article XIII
   i. YES, Article XIII
   j. YES, Article II
   k. YES, Article VI
   l. NO, Article II

II-5. OPINIONS ABOUT GOVERNMENT UNDER THE ARTICLES OF CONFEDERATION, 1783-1787

The Treaty of Paris was signed by representatives of the United States and Great Britain on September 3, 1783. This act officially ended the American War for Independence. The independence of the United States of America was recognized, and boundaries of the new nation were set.

The Articles of Confederation were ratified by all thirteen of the United States as of March 1, 1781. These Articles served as the constitution, or plan for government, of the United States of America.

Many Americans were very pleased by the terms of government set in the Articles of Confederation. Others believed that the Articles were flawed, and they warned Americans about the need to revise or overturn them.

Following are excerpts from the writings of some American leaders during the period from 1783-1787, which reveal important opinions about the government under the Articles of Confederation. The excerpts from these documents also contain evidence about events associated with the convening of the Constitutional Convention in 1787.

As you read the following documents, think about answers to these questions.

1. What views were expressed about strengths or weaknesses of government under the Articles of Confederation?

2. What were the main similarities and differences in the ideas about government?

Document 1: A Warning about the Need to Strengthen the Government of the United States

George Washington, the great general of the American forces in the War for Independence, wrote a letter in 1783 that was sent to each of the thirteen state governments. He believed that the government under the Articles of Confederation might be too weak to hold the nation together.

1. What was the warning that Washington sent to the American people?
2. According to Washington, how could Americans avoid the bad outcomes described in his warning?

There are four things, which I humbly conceive, are essential to the well being, I may even venture to say, to the existence of the United States as an Independent Power:

1st. An indissoluble Union of the States under one Federal Head.

2dly. A Sacred regard to Public Justice.

3dly. The adoption of a proper Peace Establishment, and

4thly. The prevalence of that pacific and friendly Disposition, among the People of the United States, which will induce them to forget their local prejudices and policies, to make those mutual concessions which are requisite to the general prosperity, and in some instances, to sacrifice their individual advantages to the interest of the Community....

...it will be a part of my duty...to insist upon the following positions:

That unless the States will suffer Congress to exercise those prerogatives, they are undoubtedly invested with by the Constitution [the Articles of Confederation], every thing must very rapidly tend to Anarchy and confusion; That it is indispensable to the happiness of the individual States, that there should be lodged somewhere, a Supreme Power to regulate and govern the general concerns of the Confederated Republic...; That there must be a faithful and pointed compliance on the part of every State, with the late proposals and demands of Congress, or the most fatal consequences will ensue; That whatever measures have a tendency to dissolve the Union, or...lessen the Sovereign Authority, ought to be considered as hostile to the Liberty and Independence of America....

Document 2: A Warning Against Hasty Revision of the Articles of Confederation

Richard Henry Lee of Virginia was the president (presiding officer) of Congress in 1785. In a letter to Samuel Morse in 1785, Lee argued against immediate revision of the Articles of Confederation to strengthen the government of the United States.

1. Why was Lee against immediate changes in the Articles of Confederation?
2. To what extent did Lee disagree with the views of George Washington? Explain.

> ...we hear a constant cry...That Congress must have more power--That we cannot be secure & happy until Congress command implicitly both purse & sword. So that our confederation must be perpetually changing to answer sinister views in the greater part, until every fence is thrown down that was designed to protect & cover the rights of Mankind. It is a melancholy consideration that many wise & good men have, somehow or other, fallen in with these ruinous opinions. I think Sir that the first maxim of a man who loves liberty should be, never to grant to Rulers an atom of power that is not most clearly & indispensably necessary for the safety and well being of Society. To say that these Rulers are revocable, and holding their places during pleasure may not be supposed to design evil for self-aggrandizement, is affirming what I cannot easily admit. Look to history and see how often the liberties of mankind have been oppressed & ruined by the same delusive hopes & falacious reasoning. The fact is, that power poisons the mind of its possessor and aids him to remove the shackles that restrain itself. To be sure, all things human must partake of human infirmity, and therefore the Confederation should not be presumptuously called an infallible system for all times and all situations--but tho' this is true, yet as it is a great and fundamental system of Union & Security, no change should be admitted until proved to be necessary by the fairest fullest & most mature experience....

Document 3: Opposition to a Constitutional Convention

In 1785, a majority of the legislature of the state of Massachusetts voted to advise the state's delegates in Congress to propose a convention for the purpose of revising the Articles of Confederation. The state legislators were concerned that the government of the United States was too weak, since it had no power to regulate commerce or raise taxes. The Massachusetts delegation in Congress refused to follow the advice of their state legislature. They explained their opposition to a constitutional convention in a letter to the state legislature, September 3, 1785.

1. Why did the delegates to Congress from Massachusetts oppose a convention to revise the Articles of Confederation?
2. To what extent did their opinions agree with those of Richard Henry Lee and George Washington?

...The great object of the Revolution was the establishment of good government, and each of the states, in forming their own as well as the federal constitution, have adopted republican principles. Notwithstanding this, plans have been artfully laid and vigorously pursued which, had they been successful, we think, would inevitably have changed our republican governments into baleful aristocracies. Those plans are frustrated, but the same spirit remains in their abettors....

What the effect then may be of calling a convention to revise the Confederation generally, we leave with Your Excellency and the honorable legislature to determine. We are apprehensive, and it is our duty to declare it, that such a measure would produce throughout the Union an exertion of the friends of an aristocracy to send members who would promote a change of government....

...we think there is a great danger of a report [from a convention to revise the Articles of Confederation] which would invest Congress with powers that the honorable legislature have not the most distant intention to delegate. Perhaps it may be said this can produce no ill effect; because Congress may correct the report, however exceptionable, or, if passed by them, any of the states may refuse to ratify it. True it is that Congress and the states have such powers; but would not such a report affect the tranquility and weaken the government of the Union?

...every measure should be avoided which would strengthen the hands of the enemies to a free government....

Document 4: Predictions of a Crisis

On June 27, 1786, John Jay wrote to George Washington from New York. He said: "Our affairs seem to lead to some crisis, some revolution--something that I cannot foresee or conjecture." Washington replied to Jay's letter on August 1, 1786.

1. Did Washington agree with Jay?
2. How similar were Washington's views in this letter to his opinions in his letter of 1783? (See Document 1.)

Your sentiments that our affairs are drawing rapidly to a crisis, accord with my own.... I do not conceive we can exist long as a nation without having lodged somewhere a power, which will pervade the whole Union in as energetic a manner as the authority of the state governments extends over the several states.

What astonishing changes a few years are capable of producing. I am told that even respectable characters speak of a monarchical form of government without horror.... What a triumph for our enemies to verify their predictions! What a triumph for the advocates of despotism to find, that we are incapable of governing ourselves, and that systems founded on the basis of equal liberty are...fallacious. Would to God, that wise measures may be taken in time to avert the consequences we have but too much reason to apprehend....

Document 5: Reasons for Shays' Rebellion

Economic conditions were bad in 1786. Farmers seemed to suffer more than others. Many had large debts. In western Massachusetts, discontent grew as homes and farms were lost by farmers who could not pay their debts. Some people went to jail as punishment for not paying debts.

The poor farmers asked the state government for help. But the state legislature did nothing to aid them. Popular discontent led to riots. Mobs stopped government officials from punishing debtors or from auctioning the property of those in debt.

Daniel Shays, a veteran of the War for Independence, became a leader of several hundred rebels in November of 1786. They threatened state government officials, but were routed by the state militia in February of 1787.

Daniel Gray of Hampshire County was a spokesman for the rebels. He reported to the public the reasons for the riots that were led by Daniel Shays.

According to Daniel Gray, what were main reasons for the rebellion?

> We have thought proper to inform you of some of the principal causes of the late risings of the people and also of their present movements, viz.:
>
> 1. The present expensive mode of collecting debts, which by reason of the great scarcity of cash will of necessity fill our jails with unhappy debtors, and thereby a reputable body of people rendered incapable of being serviceable either to themselves or the community.
>
> 2. The monies raised by impost and excise being appropriated to discharge the interest of governmental securities, and not the foreign debt, when these securities are not subject to taxation.
>
> 3. A suspension of the writ of habeas corpus, by which those persons who have stepped forth to assert and maintain the rights of the people are liable to be taken and conveyed even to the most distant part of the commonwealth, and thereby subjected to an unjust punishment.
>
> 4. The unlimited power granted to justices of the peace, and sheriffs, deputy sheriffs, and constables by the Riot Act, indemnifying them to the prosecution thereof; when perhaps wholly actuated from a principle of revenge, hatred, and envy....

Document 6: A Letter about Shays' Rebellion

Shays' Rebellion was crushed quickly by the Massachusetts state militia. Nonetheless, it was viewed with alarm by many Americans, who added this event to their list of reasons for changing the Articles of Confederation. Abigail Adams was in England at the time of Shays' Rebellion. Her husband, John Adams, was the representative of the United States to the British government. Reports of Shays' Rebellion had been sent to her from friends in Massachusetts, where her home was located. On January 2, 1787, she expressed her views of the rebellion in a letter to Thomas Jefferson, who was in Paris, serving as representative of the United States to the French government.

1. What was Abigail Adams' opinion of the rebels?
2. What were her views about the likely causes and consequences of the rebellion?

> With regard to the tumults in my native state which you inquire about, I wish I could say that report had exaggerated them. It is too true, sir, that they have been carried to so alarming a height as to stop the courts of justice in several counties. Ignorant, restless desperadoes, without conscience or principles, have led a deluded multitude to follow their standard, under pretense of grievances which have no existence but in their imaginations. Some of them were crying out for a paper currency, some for an equal distribution of property, some were for annihilating all debts, others complaining that the Senate was a useless branch of government, that the Court of Common Pleas was unnecessary, and that the sitting of the General Court in Boston was a grievance. By this list you will see the materials which compose this rebellion and the necessity there is of the wisest and most vigorous measures to quell and suppress it. Instead of that laudable spirit which you approve, which makes a people watchful over their liberties and alert in the defense of them, these mobbish insurgents are for sapping the foundation, and destroying the whole fabric at once.
>
> But as these people make only a small part of the state, when compared to the more sensible and judicious, and although they create a just alarm and give much trouble and uneasiness, I cannot help flattering myself that they will prove salutary to the state at large, by leading to an investigation of the causes which have produced these commotions....
>
> The lower order of the community were pressed for taxes, and though possessed of landed property they were unable to answer the demand, while those who possessed money were fearful of lending....

Document 7: Report from the Annapolis Convention

A convention was held at Annapolis, Maryland, from September 11-14, 1786. Delegates from five states were there: New York, New Jersey, Delaware, Pennsylvania, and Virginia. James Madison of Virginia had influenced his state legislature to call for a meeting of representatives from the thirteen states to discuss amendments to the Articles of Confederation that would provide for effective regulation of commerce between the states. When representatives from only five states came to Annapolis, Madison and others at the convention decided not to discuss revisions to the Articles of Confederation. Instead, they issued a report, which invited the governments of the thirteen states to send delegates in May of 1787 to a convention in Philadelphia. A copy was sent to the Congress of the United States. The object of the proposed meeting in Philadelphia was to revise the Articles of Confederation. Alexander Hamilton of New York wrote the report of the Annapolis Convention.

1. Why was this report written?
2. What views about the Articles of Confederation were expressed in this report?

To the Honorable, the legislatures of Virginia, Delaware, Pennsylvania, New Jersey, and New York, the commissioners from the said states, respectively assembled at Annapolis, humbly beg leave to report....

That there are important defects in the system of the federal government is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects, upon a closer examination, may be found greater and more numerous than even these acts imply is at least so far probable, from the embarrassments which characterize the present state of our national affairs, foreign and domestic, as may reasonably be supposed to merit a deliberate and candid discussion, in some mode, which will unite the sentiments and councils of all the states. In the choice of the mode, your commissioners are of opinion that a convention of deputies from the different states, for the special and sole purpose of entering into this investigation and digesting a plan for supplying such defects as may be discovered to exist, will be entitled to a preference from considerations which will occur without being particularized....

...your commissioners, with the most respectful deference, beg leave to suggest their unanimous conviction that it may essentially tend to advance the interests of the Union if the states, by whom they have been respectively delegated, would themselves concur and use their endeavors to procure the concurrence of the other states in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled, as when agreed to by them, and afterward confirmed by the legislatures of every state, will effectually provide for the same....

Document 8: Approval by Congress of a Convention to Revise the Articles of Confederation

On February 21, 1787, Congress agreed to the report of the Annapolis Convention and granted official approval to the proposed convention in Philadelphia. Even before Congress had acted, six states had appointed delegates to the convention; these were the states of Delaware, Georgia, New Jersey, North Carolina, Pennsylvania, and Virginia.

By June, 1787, six other states had appointed delegates; these were the states of Maryland, Connecticut, Massachusetts, New Hampshire, New York, and South Carolina. The state officials of Rhode Island decided not to send representatives to the convention.

1. What was the mission set by Congress for the convention in Philadelphia?
2. To what extent did this document agree with the report of the Annapolis Convention?

Whereas there is provision in the Articles of Confederation & perpetual Union for making alterations therein by the Assent of a Congress of the United States and of the legislatures of the several States; And whereas experience hath evinced that there are defects in the present Confederation....

Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union.

Document 9: Notes of a Delegate to the Constitutional Convention

The Constitutional Convention met in Philadelphia from May until September 17, 1787. James Madison of Virginia was one of the leading participants. He had been one of the earliest effective critics of government under the Articles of Confederation. He also was a leader in the movement to convene the Constitutional Convention in Philadelphia. Madison prepared diligently for the convention. He made careful plans about changes in the government that he wanted to propose at the convention. He also noted, in April of 1787, main weaknesses of the government of the United States, which needed to be corrected.

What were Madison's views about weaknesses of government under the Articles of Confederation?

Vices of the Political System of the United States

1. Failure of the States to comply with the Constitutional Requisitions.
2. Encroachments by the States on the federal authority.
3. Violations of the law of nations and treaties.
4. Trespasses of the states on the rights of each other.
5. Want of concert in matters where common interest requires it.
6. Want of Guaranty to the States of their Constitutions and laws against internal violence.
7. Want of sanction to the laws, and of coercion in the Government of the Confederacy.
8. Want of ratification by the people of the articles of Confederation.
9. Multiplicity of the laws in the several States.
10. Mutability of the laws of the States.

Document 10: Washington's Advice to Delegates at the Constitutional Convention

The first meeting of the Constitutional Convention was held on May 25, 1787. The delegates voted unanimously to elect George Washington as president of the Convention. According to the official records, he spoke to the Convention only two times. Otherwise he carefully maintained order as the presiding officer and directed the business of the Convention efficiently and effectively. He also influenced the ideas and decisions of delegates informally through meetings at dinner and in private conversations.

Following are two examples of Washington's ideas at the Convention. The first example is taken from a letter of May 30, 1787, to Thomas Jefferson, who was in Paris, France. It reveals the kind of private advice that he offered to delegates. The second example is from a brief speech that Washington made to the delegates during the opening phase of the Convention.

1. How similar were the views of Washington in 1787 to his views in 1783? (See Document 1.)
2. To what extent did Washington seem to agree or disagree with the mission set for the Convention by the Congress of the United States?
3. What might have been Washington's purpose in speaking to the delegates as revealed in the document below?

Washington to Jefferson, May 30, 1787

...the situation of the general government, if it can be called a government, is shaken to its foundation, and liable to be overturned by every blast. In a word it is at an end; and, unless a remedy is soon applied, anarchy and confusion will inevitably ensue.

Remarks to the Convention

It is too probable that no plan we propose will be adopted. Perhaps another dreadful conflict is to be sustained. If to please the people, we offer what we ourselves disapprove, how can we afterwards defend our work? Let us raise a standard to which the wise and honest can repair....

Using Evidence from Documents

Use evidence from Documents 1-10 to respond to the activities and questions that follow.

1. Match the events in List I with the date when they happened. Place the letter next to the correct date in List II in the space next to the appropriate event in List I. Items in List II may be used more than one time.

List I

_____1. Start of Shays' Rebellion

_____2. Annapolis Convention

_____3. Washington's Letter to the 13 State Governments

_____4. Beginning of the Constitutional Convention

_____5. End of Shays' Rebellion

_____6. Refusal of Massachusetts' Delegation to Congress to Support the Convening of a Constitutional Convention

_____7. Richard Henry Lee's Opposition to Revision of the Articles of Confederation

List II

A. 1781

B. 1782

C. 1783

D. 1784

E. 1785

F. 1786

G. 1787

2. Which of these statements can be supported with evidence from Documents 1-10?

(a) Place an "X" in the space next to each item that is backed up or supported conclusively by evidence in Documents 1-10.

(b) Place an "O" in the space next to each item that is rejected conclusively by evidence in Documents 1-10.

(c) Make no mark in the space next to each item that is neither supported nor rejected conclusively by evidence in Documents 1-10. (These items might be true or false; however, there is not sufficient evidence in these documents to make a conclusive judgment.)

Be prepared to explain your responses. Refer to the content of particular documents to support your answers.

_____a. There was practically no support by members of Congress for the Articles of Confederation during the period from 1783-1787.

_____b. George Washington wrote that he wanted to replace the Articles of Confederation with a new constitution as early as 1783.

_____c. Shays' Rebellion influenced the majority of Americans to support the replacement of the Articles of Confederation with a new constitution.

_____d. Members of Congress were the primary supporters of the movement to hold a constitutional convention.

_____e. A main criticism of government under the Articles of Confederation was lack of power by a central government to make and enforce laws throughout the United States.

_____f. A main concern of those who supported the Articles of Confederation was that a new constitution might permit a strong central government to destroy important rights of the states and liberties of the people.

3. Use evidence in Documents 1-10 as the starting point for discussion of these questions.

   a. Why did George Washington, Alexander Hamilton, and James Madison want basic changes in the plan for government of the United States?

   b. Why did Richard Henry Lee and the Massachusetts delegation to the Congress oppose basic revisions in the Articles of Confederation?

   c. Why did Washington, Hamilton, Madison, and their supporters succeed in their plans to convene a constitutional convention?

4. What additional evidence would be helpful in answering the preceding questions? Make a list of types of documents, or specific documents, that might include evidence needed to make more complete responses to the preceding questions.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the purpose of the lesson.

- Have them read the introduction to the lesson and Document 1.

- Discuss Document 1 with students. Guide the students in their interpretation of the document. Discuss the two questions at the beginning of the document. Solicit and answer questions about how to approach interpretation of a document or primary source.

Developing the Lesson

- Ask students to read all of the documents in this lesson. Tell them to use the questions that precede each document as guides to their reading and interpretation of the documents.

- Conduct a class discussion in which you examine with students each document in the lesson. Move through the documents, one by one, and discuss the questions that precede each document. Raise and discuss other questions about the document that seem interesting to you and your students. Help the students to comprehend the main ideas in each document.

Concluding the Lesson

- Have students complete activities 1 and 2 at the end of the lesson. Discuss answers with them.

- Have students discuss responses to the questions in items 3 and 4 at the end of the lesson.

- You might wish to have students write an essay, based on evidence in the documents, in response to one or more of the questions in item 3.

Suggested Reading

Flexner, James Thomas. George Washington and the New Nation, 1783-1793 (Boston: Little, Brown and Company, 1970).

This is one of a four-volume set on the life of Washington. It discusses his criticisms of the Articles of Confederation and leadership at the Constitutional Convention.

Sanderlen, George. A Hoop to the Barrel: The Making of the American Constitution (New York: Coward, McCann and Geoghegan, Inc., 1974), pp. 8-44.

The first part of this book is about events preceding the Constitutional Convention. It includes edited primary sources. This book is designed for use by high school students.

Answer Sheet, Items 1 and 2 at the End of the Lesson

1. 1 - F
   2 - F
   3 - C
   4 - G
   5 - G
   6 - E
   7 - E

2. a - O
   b - O
   c - __
   d - O
   e - X
   f - X

II-6. WASHINGTON'S DECISION TO ATTEND THE CONSTITUTIONAL CONVENTION

Background to a Difficult Decision

After the War for Independence, General George Washington went home. After eight years of continuous service to his country, the great American hero retired from public life. He wanted to enjoy his last years of life as a farmer, which always had been his favorite occupation.

Washington expressed relief and hopes for an easy-going future in a letter to the Marquis de Lafayette:

> I am not only retired from all public employment, but I am retiring within myself, and shall be able to wend the solitary walk and tread the paths of private life with heartfelt satisfaction. Envious of none, I am determined to be pleased with all, and this, my dear friend, being the order of my march, I will move gently down the stream of life until I sleep with my fathers.

In a letter to the American people, Washington wrote that he never again would seek public office. He also issued a warning about the need for a stronger national government. "No man in the United States is, or can be, more deeply impressed with the necessity of reform in our present Confederation than myself," wrote Washington.

Washington's advice was ignored. The Articles of Confederation were not amended. Consequently, from 1783 to 1786, the new American nation suffered greatly from an ineffective national government. Many citizens doubted that the weak United States could survive. It seemed likely that the fragile national union would be fractured into several competing republics.

As the nation's troubles became worse and worse, several leading citizens decided finally to reform the Articles of Confederation. A majority in Congress agreed, and a convention was scheduled to convene in Philadelphia during May, 1787. Each state government was invited to select delegates, who would participate in the momentous meeting to change the national government.

The Occasion for a Decision

The Virginia government elected Washington to head the state delegation. Washington, however, was puzzled about whether to go to Philadelphia. There seemed to be important reasons for staying at home.

George Washington faced a difficult decision. Should he attend the convention in Philadelphia?

Reasons for Not Going to the Convention

Washington certainly didn't feel up to a long, hard trip. He was 55-years-old, and he often felt older. His body usually ached from rheumatism; sometimes he couldn't lift his arm as high as his head.

Family problems were pressing Washington. His 79-year-old mother was very ill, as was his sister. They lived nearby and often asked for help. His brother had died in January, 1787, which depressed George very much. He also wanted to help his dead brother's children.

George's wife, Martha, did not want her husband to leave home again. She had hardly seen him during eight years of the War for Independence. After the war, in 1783, she said: "I had anticipated that from this moment we should have been left to grow old in solitude and tranquility together." Likewise, George was reluctant to once again forsake the comforts of his home for public service.

Business problems were a constant worry. Washington hesitated to leave his plantation for several weeks, because the place needed his attention. There were repairs to be made and debts to be paid. He believed it was his duty to attend to these matters.

The political reasons for staying home loomed larger than the personal reasons for not going to Philadelphia. First of all, what if the convention failed? What if most states didn't bother to send delegates? Washington would be embarrassed. His great reputation would be ruined. His old friend, Henry Knox, advised him to stay home to protect his good name. James Madison wrote: "It ought not to be wished by any of his friends that he should participate in any abortive undertakings."

John Jay reminded him that the convention wasn't quite legal. The legal procedures for amending the Articles of Confederation were being ignored by the organizers of the Philadelphia convention. Should Washington go to a meeting that citizens might view as illegal?

Washington also remembered his promise never again to seek public office. If he accepted election as a delegate to the convention people might say that he had broken his word. They might also think he wanted to use the convention to gain power in the government. Did he want to risk being called a hypocrite? Did he want to seem to be a schemer in pursuit of personal power and glory?

Reasons for Going to the Convention

As Washington considered his decision, he noted several reasons in favor of going to Philadelphia. After awhile, Congress recognized the convention. This gave the meeting an appearance of legality.

By the end of March, it seemed that most states would send delegates to Philadelphia. Only Rhode Island seemed likely to ignore the convention. There was no doubt that there would be a convention. Furthermore, the convention might be successful. How would he feel if the convention made great achievements without his participation? Would his reputation suffer if great decisions were made in his absence?

Washington found out that most of the delegates already selected were men with great reputations. If he went to the Convention, he would be in good company.

During March, 1787, Washington received many letters urging him to attend the convention. They came from old comrades in the war, who asked their General to preserve the fruits of this victory by helping to create an effective national government. Henry Knox changed his advice. He wrote: "It is the general wish that you should attend."

Some leaders believed that Washington's participation might make the difference between success or failure at the convention. His reputation among citizens was so great that his attendance would make the convention seem legitimate.

Why Washington Decided to Go

On March 28, George Washington wrote to Governor Randolph of Virginia that he would lead the Virginia delegation in Philadelphia. He decided it was his duty to be at the convention. Washington feared that Americans would consider him a bad citizen if he didn't participate in an event of such great significance.

Washington wanted very much for his new nation to succeed. "To see this country happy . . . is so much the wish of my soul," he said. He had to make his best effort to help, no matter what personal or political risks he might take.

His fellow citizens needed him, so Washington once again rose to the challenge of public responsibility. He mustered his strength and went to Philadelphia in May, 1787.

Henry Knox observed: "Secure as he was in his fame, he has again committed it to the mercy of events. Nothing but the critical situation of his country would have induced him to so hazardous a conduct."

Reviewing Facts and Main Ideas About Washington's Decision

1. What was the difficult decision facing Geroge Washington in 1787?
2. What political events brought about Washington's occasion for decision?
3. What were main reasons for not attending the convention in Philadelphia?
4. What were main reasons for attending the convention?

Analysis of Washington's Decision

George Washington's decision to attend the convention involved alternatives, consequences and goals. Anyone faced with a difficult decision should think carefully about these questions:

1. What are my alternatives or choices?
2. What are the possible and probable consequences, or outcomes, of each choice?
3. What are my goals? (What do I want or value in this situation?)
4. In view of my goals, which consequences are best in in this situation?
5. What choice or decision should I make? (Which choice is most likely to lead toward my goals?)

You can use a Decision Tree to keep track of a decision maker's answers to the questions about goals, alternatives and consequences. Look at the Decision Tree, on page 81, about George Washington's decision to attend the convention. This Decision

Tree is a chart, which shows the alternatives, consequences and goals that were involved in Washington's occasion for decision -- whether or not to attend the convention.

Look at the Decision Tree and answer this question: What were Washington's alternatives in this case?

Washington's main goals in this case reveal his values -- his beliefs about what is good or bad, right or wrong. The goals in this chart are guides to Washington's choice to attend the convention. They help us to understand why he thought one alternative was better than the other in this occasion for decision.

Look at the Decision Tree and answer these questions:

1. What were Washington's goals in this case?
2. What did Washington's goals tell us about his values?
3. How can Washington's goals and values be used to explain his decision to attend the convention?

Identifying alternatives, consequences and goals can help you understand and analyze any decision making situation. Good decisions have good consequences for the decision maker and others. The outcomes are desirable for the people affected by the decision.

Look at the Decision Tree and answer these questions:

1. What were positive and negative consequences associated with a decision to go to the convention?
2. What were positive and negative consequences of a decision not to go to the convention?

Washington's decision had some positive and negative effects on him and others. Make two lists. First, review the case study and Decision Tree and identify how Washington's decision was likely to affect him. Next, review the case study and Decision Tree and identify how the decision was likely to affect various other individuals and groups.

A fair decision balances the needs and wants of individuals with the needs and wants of the community to which they belong. On balance, did Washington's decision seem fair to himself and others?

Choosing a desirable consequence that is unlikely or impossible to achieve is not a practical decision. Thus, it is not a good decision. It is foolish to make decisions that are not very practical. Was Washington's decision a practical choice?

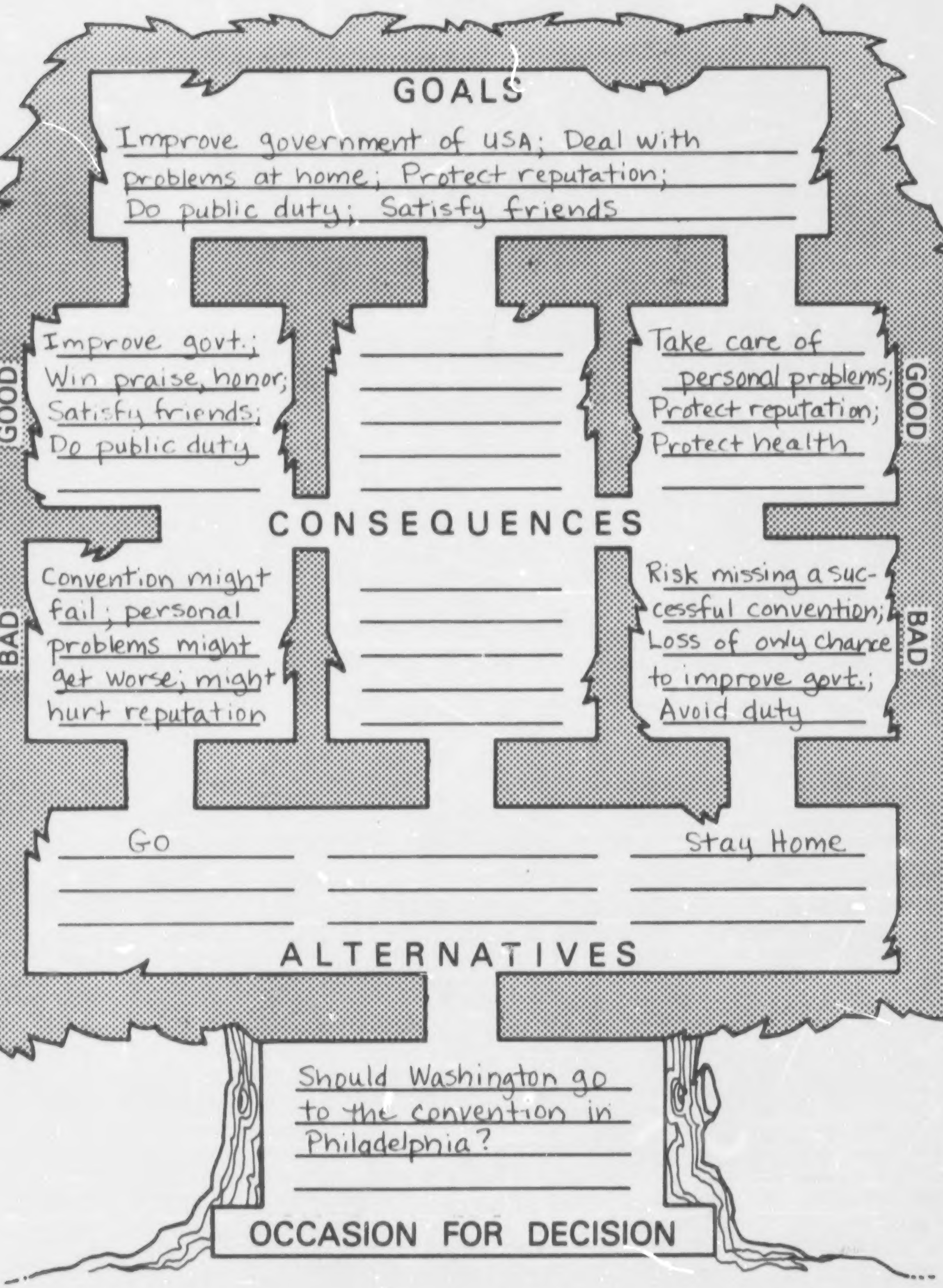
A chart, such as the Decision Tree, can help you to keep track of alternatives, consequences and goals in any occasion for decision. The Decision Tree can help you to clarify your own decisions and to analyze the decisions of others.

When using the Decision Tree, you sometimes may wish to start with the alternatives and work your way to the goals. Sometimes, however, it may seem easier to start with goals by asking: What is best in this situation? You may enter the Decision Tree at different places when analyzing or making different decisions.

Reviewing the Use of a Decision Tree

1. What is a Decision Tree?
2. What are the uses of a Decision Tree?
3. Explain each of these parts of a Decision Tree:
    a. occasion for decision
    b. alternatives
    c. consequences
    d. goals
4. Do you believe that Washington made a good decision in this case? Explain.

DECISION TREE



GOALS

Improve government of USA; Deal with problems at home; Protect reputation; Do public duty; Satisfy friends

CONSEQUENCES

GOOD

Improve govt.; Win praise, honor; Satisfy friends; Do public duty

BAD

Convention might fail; personal problems might get worse; might hurt reputation

GOOD

Take care of personal problems; Protect reputation; Protect health

BAD

Risk missing a successful convention; Loss of only chance to improve govt.; Avoid duty

ALTERNATIVES

Go

Stay Home

OCCASION FOR DECISION

Should Washington go to the convention in Philadelphia?

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

II-6. Washington's Decision to Attend the Constitutional Convention

Preview of Main Points

This lesson tells about the decision of George Washington to attend the meeting in Philadelphia, which became the Constitutional Convention of 1787. The conflicting pressures, which made Washington's decision difficult, are discussed. A main purpose of this lesson is to introduce decision making as it confronts citizens in a free society. Students are introduced to procedures that help them clarify, analyze and make decisions.

Connection to Textbooks

This lesson can be used with standard textbook discussions of the events that led to the Constitutional Convention at Philadelphia in 1787. None of the standard textbooks includes a detailed discussion of Washington's difficult decision to attend the Convention. Most of the textbooks do not even mention this interesting and revealing choice. This case study can be used as an introductory lesson to precede textbook treatments of the Constitutional Convention.

Connections to Other Lessons in this Sourcebook

This case study is an introduction to a decision making routine and a graphic device to chart decisions (The Decision Tree), which are applicable to several other lessons in this Sourcebook. The lesson provides a simple introduction and guide to the basic steps of rational decision making. Many students may be unfamiliar with this decision making routine. If so, this lesson is a prerequisite to several decision making lessons in various parts of the Sourcebook. Students who are familiar with lessons about decision making may find this lesson to be a useful review.

Objectives

Students are expected to:

1. explain the situation that brought about Washington's occasion for decision in this case;

2. identify Washington's alternatives in this case;

3. identify reasons for and against a decision by Washington to attend the convention in Philadelphia;

4. explain why Washington decided to attend the convention;

5. explain the uses of a Decision Tree;

6. use a Decision Tree to explain the main steps in making a decision, such as Washington's choice to attend the convention;

7. appraise Washington's decision in terms of the decision's (a) effect on Washington, (b) effect on various others, (c) practicality, (d) fairness.

Suggestions For Teaching The Lesson

This lesson can be used as a "springboard" into textbook discussions of the organization of the convention in Philadelphia. The lesson also may be used as a simple introduction to decision making by citizens, which may be necessary for students who have not encountered this type of lesson before.

Opening The Lesson

- Begin by previewing the main points and purposes of the lesson. This provides students with a sense of direction.

Developing The Lesson

- Have the students read the description of Washington's decision. Then conduct a discussion of the questions that follow the case to make certain that students know the main facts and ideas. These questions appear on page 4 .

- Move to the part of the lesson about the analysis of Washington's decision, which introduces a decision making routine and the Decision Tree. You might make use of a transparency of a Decision Tree to guide class discussion of the main parts of the decision making routing -- (1) alternatives, (2) consequences, and (3) goals.

- Ask students to give examples of alternatives, consequences and goals to demonstrate that they understand these ideas.

- Emphasize the meaning of the decision making routine, so that students will be able to analyze and make decisions systematically in subsequent lessons.

- Have students look at the goals in the Decision Tree about

Washington's decision. Then ask them to answer the questions about goals on page 5.

- Have students look at the consequences in the Decision Tree. Then ask them to complete the activity on page 5, which involves listing of positive and negative effects of Washington's alternatives.

- Have students discuss the questions on page 6 about the practicality of Washington's decision.

Concluding The Lesson

- Conclude the lesson by conducting a discussion of the questions at the end of the lesson, on page 6. These questions emphasize the meaning and uses of a Decision Tree.

- The final question involves an overall judgment about the worth of Washington's decision. Ask students to support their judgment with evidence and examples drawn from the case study of Washington's decision and their examination of the Decision Tree.

Suggested Reading

The following book is part of a set of four volumes on the life of Washington. It is considered the best biography of Washington. Pages 30-111 tell about the events of Washington's life from 1783-1787, prior to his participation in the Constitutional Convention.

Flexner, James Thomas. *George Washington and the New Nation: 1783-1793* (Boston: Little, Brown and Company, 1970), pp. 30-111.

II-7. DECISIONS ABOUT THE PRESIDENCY AT THE CONSTITUTIONAL CONVENTION, 1787

Lack of executive power was a main weakness of government under the Articles of Confederation. There was a President, but he was merely the presiding officer (chairman) of the Congress.

A main political goal of the Constitutional Convention was to establish executive power, so that laws of the national government could be carried out. But what kind of executive office should be created? No question puzzled and divided the delegates more than this one. The process of answering it involved lively debates and careful compromises of clashing opinions. The outcome was creation of a unique executive office, the American Presidency.

The making of the Presidency in 1787 was one of the great, original achievements of the Constitutional Convention. More than 150 years later, President Harry S Truman said: "The Presidency is the most peculiar office in the world. There's never been one like it...."

How was the American Presidency invented at the Constitutional Convention? What alternatives did the delegates consider? What critical decisions were made about the scope and style of the executive office?

Agreeing to Establish Executive Power

The first proposal of an executive office was presented to the Convention on May 29, 1787, as part of the Virginia Plan. Resolve 7 of the Virginia Plan recommended "that a national executive be instituted with power to carry into effect the national laws...."

Charles Pinckney of South Carolina urged a "vigorous executive." So did James Wilson of Pennsylvania, who wanted an executive who could carry out duties with "energy, dispatch, and responsibility."

The delegates agreed to an executive office with enough power to enforce laws. They disagreed, however, about the kind of executive office that should be created.

Two Views of the Executive Office

One group of delegates favored a single chief executive, who would be elected by eligible voters of the United States. The executive office would be separate from the Congress, and the chief executive would have a broad range of distinct powers and duties. Prominent advocates of a strong chief executive were: (1) George Washington of Virginia, (2) James Wilson of Pennsylvania, (3) Gouverneur Morris of Pennsylvania, (4) James Madison of Virginia, (5) Alexander Hamilton of New York, (6) Elbridge Gerry of Massachusetts, and (7) Rufus King of Massachusetts.

Another group of delegates wanted a plural executive office; that is, more than one person would share equally the powers and duties of the executive office. The executive officers would be chosen by the Congress and would report to the legislative branch of government. This view of the executive office reflected a strong fear of giving too much power to a single person. Rather, this position favored a government dominated by the Congress. Prominent supporters of this position were: (1) George Mason of Virginia, (2) Roger Sherman of Connecticut, (3) Benjamin Franklin of Pennsylvania, (4) Hugh Williamson of North Carolina, and (5) Edmund Randolph of Virginia.

Advocates of these clashing views of the executive office competed for support among the delegates at the Constitutional Convention. Differences often were settled by compromise; that is, each side gave up more or less of what it wanted in order to reach an agreement that could be approved by a majority of votes at the Convention.

Critical decisions that created the office of President were products of compromise, as were some other major decisions at the Constitutional Convention. The delegates made compromises to answer four important questions about the executive office:

(1) Should the executive be one person or three?
(2) How should the President be elected?
(3) How long should the President serve?
(4) Should the President have the veto power?

Should the Executive Be One Person or Three?

James Wilson started an argument when he proposed that the executive office consist of a single person. Wilson said the United States needed a chief executive to provide effective leadership and administration for the national government. He tried to convince skeptics that a single, powerful executive would not become a tyrant, as long as the Congress was powerful enough to check and limit the chief executive's power.

Opponents, however, were not convinced by Wilson's arguments. Edmund Randolph, for example, spoke against a strong chief executive, because it seemed too similar to a monarchy. He moved that the executive office consist of three men, each from different parts of the country. There would be one from New England, one from the Middle States, and one from the South.

George Mason of Virginia supported this motion. He feared that a single executive would "pave the way to hereditary monarchy." He thought that three executives, each representing a different section of the country, would "bring with them, into office, a more perfect and extensive knowledge of the real interests of this great Union."

James Wilson led the opposition to a three-man executive. He argued that the consequences of this plan would be constant conflict and squabbling among the three executives. There would be "nothing but uncontrolled, continued and violent animosities," said Wilson.

Wilson added that a three-man executive might not be able to act quickly and decisively when necessary. By contrast, a single executive could move effectively to meet a crisis.

The majority decided to have a single Chief Executive, although three states voted against this motion -- Maryland, Delaware and New York. The general belief that George Washington would be chosen as the first Chief Executive seemed to calm the fears of delegates who feared tyranny or monarchy. One delegate, Pierce Butler of South Carolina, wrote later to his son that "I do not believe they (the Executive Powers) would have been so great, had not many of the members cast their eyes toward General Washington as President; and shaped their ideas of the powers to be given a President by their opinions of his virtue."

After deciding to have one executive, instead of three, the delegates argued about the manner of selecting him.

How Should the President Be Elected?

Gouverneur Morris of Pennsylvania started an argument by moving that the President be elected by eligible voters in the United States.

Roger Sherman of Connecticut disagreed. He wanted the President to be chosen by the Congress or national legislature.

Morris said: "If the people should elect, they will never fail to prefer some man of distinguished character, or services.... If the Legislature elect, it will be the work of intrigue, of cabal, and of faction...."

George Mason replied that "it would be as unnatural" to permit the people to elect a President, "as it would be to refer a trial of colors to a blind man."

Morris responded: "If the Legislature elect . . . it will be like the election of a pope by a conclave of cardinals."

Roger Sherman rebutted that "the sense of the nation would be better expressed by the Legislature, than by the people at large. The (people) will never be sufficiently informed (about the candidates) and besides will never give a majority of votes to any one man. They will generally vote for some man in their own state, and the largest state will have the best chance for the appointment."

Morris' motion for popular election of the President was defeated. Only his own state of Pennsylvania supported it. This outcome was in line with election practices in most of the states. At that time, only four of the thirteen states allowed eligible voters to select the chief executive or governor. In eight states, the executive was chosen by majority vote of the legislature. In Pennsylvania, there was an executive council of twelve men from whom one was chosen to be the chief executive.

At first Roger Sherman's motion -- to have Congress select the President -- was approved by a majority of the states. For awhile, the majority seemed to agree with Sherman that the Congress should be able to control the President. The power of Congress to elect the President would establish conditions for "making him absolutely dependent on that body," said Sherman.

James Wilson and James Madison were afraid of giving the Congress too much power over the President. If this happened, they argued,the Chief Executive would be unable to act forcefully and independently as a national leader.

Madison urged the Convention to free the President from dependence on Congress. He said: "If it be a fundamental principle of free government that the Legislative, Executive, and Judiciary powers should be separately exercised, it is equally so that they be independently exercised."

Madison opposed both popular election and congressional election of the President. Instead, he and the majority at the Convention finally decided for selection of the President by an "Electoral College." It was to be comprised of "electors" from each state -- the same number as the total of the state's Representatives and Senators in Congress. These electors were to meet and select a President. If no candidate gained a majority of votes, the House of Representative would choose from among the top five.

How Long Should the President Serve?

A third critical decision about the Presidency was the term of office. At first, the delegates voted to limit the President to one term of seven years. This seemed too long to many delegates. At that time, ten states limited their chief executives to one-year terms. The other three states allowed three-year terms.

The delegates from Delaware proposed a three-year term for the Presidency with the possibility of winning election no more than three times. Thus, no President could serve longer than nine years.

Gouverneur Morris argued against making a President ineligible for re-election. This would "destroy the great motive to good behavior, the hope of being rewarded by a reappointment. It was saying to him, make hay while the sun shines."

George Mason responded that to impose no limits on reelection would result in "an Executive for life." There might be no way, except assassination, to remove a bad executive from power, once he became established in the office. The outcome would be a hereditary monarchy, said Mason.

Not so, replied Morris. He proposed impeachment as a means to check the power of a bad executive. The Convention agreed and voted to pass a motion that the executive "be removable on impeachment and conviction of malpractice or neglect of duty."

The delegates later on voted for a four-year term of office with no limit on re-election.

Should the President Have the Veto Power?

Throughout the Convention, the delegates argued about exactly what powers the President should have. In particular, they debated vigorously about whether the President should have power to reject laws passed by Congress.

One part of the Virginia Plan called for a "Council of revision" (comprised of the President and members of the National Judiciary) to have a veto on legislation. This veto power would be a check on the law-making power of Congress. James Madison backed this idea. He argued that it would not detract from the separation of powers among the three branches of government. Madison said that to have the executive and judiciary exercise the veto together "would by no means interfere with that independence so much to be approved and distinguished in the several departments."

John Dickinson of Delaware disagreed with Madison. He said that the judicial and executive branches should not be joined in the use of the veto power, "because the one is the expounder and the other the executor of the laws."

Elbridge Gerry of Massachusetts presented an alternative way to establish the veto power. He proposed "that the National Executive shall have a right to negative (veto) any legislative act . . . ."

Benjamin Franklin of Pennsylvania objected to giving one person power to veto a decision of the majority in Congress. He warned that a President could abuse this power to gain favors from members of Congress in exchange for agreeing to use, or not use, the veto. He concluded that "The Executive will be always increasing (its power) here, as elsewhere, till it ends in a monarchy."

Gouverneur Morris disagreed strongly with all arguments against the creation of a strong executive, whose powers would include a veto over legislation. "One great object of the Executive is to control the Legislature," said Morris. He continued:

> The Legislature will continually seek to aggrandize and perpetuate themselves; and will seize those critical moments produced by war, invasion or convulsion for that purpose. It is necessary then that the Executive Magistrate should be the guardian of the people, even of the lower classes, against Legislative tyranny, against the great and the wealthy who in the course of things will necessarily compose the Legislative body . . . . The Executive therefore ought to be so constituted as to be the great protector of the mass of the people.

At first, Franklin's fears of a strong executive, with veto power, outweighed the arguments of Morris. Ten states voted against the proposal of an absolute veto power for the President. However, from time to time during a period of two months, the delegates discussed alternative proposals about the veto power.

James Wilson revived Madison's idea of giving the veto to a "Council of revision" composed of the President and the judiciary.

Elbridge Gerry disagreed with Wilson's motion. He argued that it would result in a "combining and mixing together" of the executive and judicial branches. This would destroy the separation of powers among these two branches of government and lead to their subjegation of the legislative branch.

John Rutledge of South Carolina agreed with Gerry. He said: "Judges ought never to give their opinion on a law, till it comes before them (in court)."

Despite these objections to exercise of the veto by a "Council of revision," the idea almost became part of the Constitution. Four states opposed it, three favored it, and the delegations of two states were divided.

After rejection of his "Council of revision," James Madison suggested a veto power for the President alone, which could be overruled by two thirds of both Houses of Congress. The Convention agreed finally to this proposal. After two and a half months of wrangling, the delegates found a way to include an executive veto power in the Constitution.

Making of the Presidency, 1787

The delegates at the Constitutional Convention made several additional decisions about the powers of the executive branch. For example, the President was granted power to appoint federal judges, ambassaders to other countries and heads of executive departments. These appointments had to be approved by two thirds of the Senate. The President was also given power to make treaties with other countries with the approval of two thirds of the Senate. And he was made commander in chief of the nation's armed forces.

The office of Vice President was created to provide a successor in case the President died, resigned or otherwise was unable to carry out the duties of the Chief Executive. Rules of eligibility for the offices of President and Vice President were specified.

Description of the Presidency appears in Article II of the Constitution. However, it remained for the occupants of the executive office to give vitality and practical meaning to the words in Article II. From 1789 (when George Washington became the first President) until today, the Presidents of the United States have shaped the powers and duties of the executive office in terms of the words in Article II. Thus, the American Presidency has grown and changed over the years within the framework of the Constitution.

Since the Constitutional Convention, the American Presidency, has been viewed as an original idea. Political scientists have said that "the Presidency is the most innovative and daring invention in the American political framework. It has been imitated, but never duplicated, by nations that have adopted constitutions since 1787."

Reviewing Main Ideas and Facts

1. Why was establishment of an effective executive office a main goal of the Constitutional Convention?
2. Why did the Convention decide to have one person as President instead of a three person executive office?
3. Why did the Convention decide against popular election of the President?
4. Why did the Convention decide against election of the President by Congress?
5. (a) What decisions did the Convention make about the President's term of office and eligibility for reelection?

   (b) Why were these decisions preferred to the alternatives?
6. (a) What alternatives about a presidential veto power were considered by the Convention?

   (b) Which alternative was chosen?

   (c) Why?
7. The Framers of the Constitution wanted to create a strong executive. They also wanted to limit the power of the executive.

   (a) Why did they want to both grant and limit executive power?

   (b) What are three of the several powers granted to the President?

   (c) What are three of the several limitations on the President's power?

Interpreting Primary Sources

1. Refer to Article I, Section 7 and Article II of the U.S. Constitution to answer these questions about the Presidency.

   (a) How old must a person be to be eligible for the Presidency?

   (b) Are all citizens of the United States, who have attained a certain age, eligible to become President? Explain.

(c) What are two ways that a President may veto a law passed by Congress?

(d) What powers of appointment does the President have?

(e) What is the main idea of the presidential oath of office?

2. Four Amendments to the Constitution have changed the Presidency since 1787. These are Amendments 12, 20, 22, 25. Refer to these four Amendments to answer the following questions.

(a) Which Amendment changed the number of times a President may be re-elected? How?

(b) Which Amendment tells about succession to the President? What does it say?

(c) Which Amendment tells about filling a vacancy in the office of Vice President? What does it say?

3. Following are three statements about the Presidency by former Presidents. Read the quotations carefully and answer the questions below them.

> All see, and most admire, the glare which hovers round the external trappings of elevated office. To me there is nothin in it, beyond the lustre which may be reflected from its connection with a power of promoting human felicity. In our progress toward political happiness my station is new; and, if I may use the expression, I walk on untrodden ground. There is scarcely any part of my conduct which may not hereafter be drawn into precedent. Under such a view of the duties inherent to my arduous office, I could not but feel a diffidence in myself on the one hand; and an anxiety for the Community that every new arrangement should be made in the best possible manner on the other.
>
> George Washington, January 9, 1790,
> in a letter

To me there is something fine in the American theory that a private citizen can be chosen by the people to occupy a position as great as that of the mightiest monarch, and to exercise a power which may for the time being surpass that of Czar, Kaiser, or Pope, and that then, after having filled this position, the man shall leave it as an unpensioned private citizen, who goes back into the ranks of his fellow citizens with entire self-respect, claiming nothing save what on his own individual merits he is entitled to receive.

Theodore Roosevelt, October 1, 1911,
in a letter

Our Government is made up of the people. You are the Government. I am only your hired servant. I am the Chief Executive of the greatest nation in the world, the highest honor that can ever come to a man on earth. But I am the servant of the people of the United States. They are not my servants. I can't order you around, or send you to labor camps, or have your heads cut off if you don't agree with me politically.

Harry S. Truman, September 26, 1948,
in a speech at San Antonio, Texas

(a) What did Washington say about his unique opportunity to shape the Presidency? Why did he have this opportunity?

(b) Theodore Roosevelt compared the power of the Presidency to a monarchy. In what ways might the office of President, at times, be similar to a monarchy?

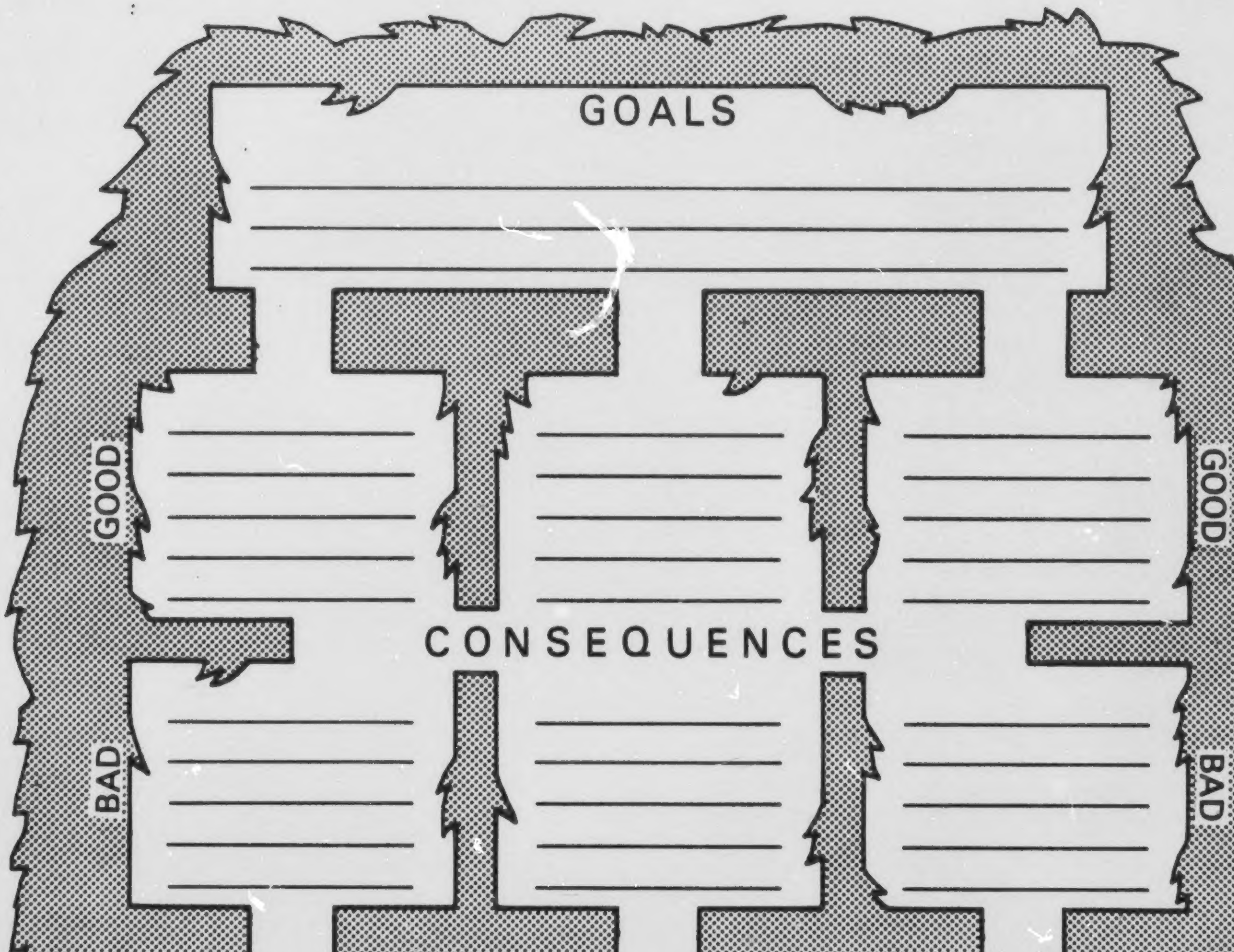
(c) According to Roosevelt and Truman, how is the Presidency unlike a monarchy?

Decision Making Skills

Use the Decision Tree on the next page to help you answer these questions.

1. Select one among the four occasions for decision about the Presidency, which are highlighted in this lesson.
2. What alternatives associated with this decision are described in the case study on pages 1-6? Can you think of other alternatives that might have been considered by the delegates?
3. What were likely consequences -- both positive and negative -- of each alternative?
4. What important goals and/or values of the delegates were relevant to this occasion for decision? What did the delegates want to achieve and avoid in this situation?
5. What choice was made in response to this occasion for decision?
6. Was this a good decision? Explain.

DECISION TREE


GOALS
GOOD
CONSEQUENCES
GOOD
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

II-7. Decisions About the Presidency at the Constitutional Convention, 1787

Preview of Main Points

This lesson tells about four critical decisions in the creation of the Presidency, which were made by the Constitutional Convention of 1787. The decisions were about these questions: (1) Should the Executive Be One Person or Three? (2) How Should the President Be Elected? (3) How Long Should the President Serve? (4) Should the President Have the Veto Power? Contending points of view are highlighted. Brief quotations from the discussion at the Convention are featured. The manner of decision making at the Convention is shown through examples of orderly debate, compromise and majority vote.

Connection to Textbooks

This lesson can be used to supplement standard textbook chapters about the Constitutional Convention, which appear in high school textbooks on American history and government. The typical textbook chapters emphasize the "Great Compromise" between large and small states about the composition of the national legislature. Other decisions are discussed briefly, such as the compromise about the tariff and slavery. Usually, the Convention's decisions about the Presidency are mentioned, but not discussed. Thus, this lesson explains in detail decisions about an important facet of the Constitution, which are treated sketchily, at best, in the textbooks. It also illuminates the manner of discussion and decision making that prevailed at the Constitutional Convention, which is not presented in the textbooks.

Objectives

Students are expected to:

1. explain the critical importance of the decisions about the Presidency at the Constitutional Convention;

2. explain why the Convention decided to have a singular executive in preference to a triumvirate;

3. explain why the Convention decided upon the "Electoral College" in preference to popular or congressional election of the President;

4. explain why the Convention decided upon a four-year term

of office with the possibility of re-election in preference to alternative proposals;

5. explain why the Convention decided to grant a veto power to the President, which could be overturned by two thirds of the national legislature;

6. explain how the Convention created an executive office that was both powerful and limited in the use of power;

7. use evidence from primary sources to answer questions about characteristics of the Presidency;

8. use a Decision Tree to analyze one of the four decisions about the Presidency that are featured in this lesson.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" case study of an important aspect of the Constitutional Convention. After reading the textbook chapter about the Constitutional Convention, students can turn to this case study for more details and ideas about the creation of the Presidency.

Opening The Lesson

- Preview the main points of the lesson for students. You might also explain how this lesson is connected to the material they have been studying in the textbook.

- Read the words of Harry Truman on page 85, about the originality of the American Presidency. Emphasize that the Presidency is an American invention. Ask students to speculate about why this invention was made by Americans in 1787.

Developing The Lesson

- Have students read the case study. Then conduct a discussion of the review questions at the end of the lesson. Make certain that students have understood the main ideas of the lesson.

- Have students examine relevant parts of the Constitution to answer the interpretation questions. These questions require examination of Article I, Section 7, Article II and Amendments XII, XX, XXII and XXV.

- Have students study the three statements by Presidents Washington, Roosevelt and Truman. Then ask them to discuss the questions that follow these primary sources.

Concluding The Lesson

- Conclude the lesson with a decision making activity. Have students use the Decision Tree and the decision making questions to guide analysis of one of the four occasions for decision featured in the lesson.
- One way to organize this activity is to divide the class into small groups of four or five students. Have each group use a Decision Tree Chart to analyze one of the occasions for decision about the Presidency. Then have one person from each group make a brief report of the group's analysis.

Suggested Reading

Bowen, Catherine Drinker. Miracle At Philadelphia: The Story of the Constitutional Convention, May to September 1787 (Boston: Little, Brown and Company, 1966.)

Chapter V of this marvelous book deals with decisions at the Convention about the Presidency. Most high school students would be able to read this interesting and worthwhile book.

Suggested Film

INVENTING A NATION

After the Revolutionary War in 1787, prominent colonists met in Philadelphia to develop a framework for governing the colonies. The film dramatizes the secret debates among Hamilton, Mason and Madison, and shows the contributions made by each to the final form and adoption of the Constitution. From AMERICA: A PERSONAL HISTORY OF THE UNITED STATES series, Time-Life Films, 1972, 30 minutes.

II-8. DECISIONS ABOUT THE CONSTITUTION AT THE MASSACHUSETTS CONVENTION, 1788

Congress sent the Constitution to the states on September 29, 1787. How would citizens judge it? Approval was needed from at least nine state conventions. Otherwise the Constitution could not become the nation's plan for government.

As of January 9, 1788, five states had ratified the Constitution -- Delaware, Pennsylvania, New Jersey, Georgia, and Connecticut. However, only one of the four largest states (Pennsylvania) had approved it. The other three biggest states -- Massachusetts, Virginia and New York -- had not yet made a decision.

Importance of the Massachusetts Convention

The attention of the nation turned to Boston, Massachusetts, where the state convention was debating about the Constitution in January, 1788. Citizens of Massachusetts were sharply divided. At the start of the convention, a slight majority of the delegates seemed to favor the Anti-Federalist position -- opposition to the Constitution.

The Federalists were worried. They knew that the decision in Massachusetts would greatly influence the conventions in New York and Virginia, which were scheduled to meet later in the year. They also realized that the United States needed Massachusetts, which was a thriving center of commerce. It seemed that the future of the United States could be decided by delegates to the Massachusetts Convention.

Notable Delegates at the Massachusetts Convention

The Federalist leaders at the convention were Rufus King and Nathaniel Gorham. They had been delegates to the Constitutional Convention of 1787. Elbridge Gerry had also represented Massachusetts at the convention in Philadelphia. In the end, however, Gerry refused to sign the finished document, and he continued to oppose it.

The two most famous and influential delegates at the Boston convention were John Hancock and Sam Adams, the legendary heroes of the American struggle for independence. In a close contest, as this seemed to be, these two men were popular enough to turn the convention _for_ or _against_ the Constitution.

On the first day of the convention, delegates elected John Hancock to be President of the meeting. The Federalists were worried, because Hancock had not taken a stand for or against ratification. Some of his friends reported that he was leaning toward the Anti-Federalist side.

Objections of the Anti-Federalists

Sam Adams said that he had "difficulties and doubts respecting some parts of the proposed Constitution."

Adams had two main objections. First, he was disturbed because there were no provisions to protect the liberties and rights of citizens, such as freedom of speech. Second, he believed that the Constitution gave too much power to the central government. In contrast, Adams wanted each state government to have more powers and rights. Adams said that "all powers not expressly delegated to Congress should be reserved to the States, to be exercised by them."

William Thompson, a delegate from Billerica, agreed with Adams. "Where is the bill of rights which shall check the power of this Congress," he said. Thompson also thought there was no need for a new Constitution. "Let us amend the old Confederation," he said. Thompson believed that a few changes in the Articles of Confederation would solve the nation's governmental problems.

Amos Singletary was one of many poor farmers from Worcester County, who feared the government's power to tax citizens. He also was afraid that only rich people would be represented in the national government under the new Constitution. Amos Singletary rose to speak:

> We contended with Great Britain . . . because they claimed a right to tax us and bind us in all cases whatever. And does not this constitution do the same? Does it not take away all we have -- all our property? Does it not lay all taxes, duties, imports, and excises? And what more have we to give?
>
> These lawyers, and men of learning, and moneyed men, that talk so finely and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves. They expect to be the managers of this Constitution, and get all the power and all the money into their own hands. And they will swallow up all us little folks.

A Defender of the Constitution

Josiah Smith, a farmer from Plymouth County, disagreed with Singletary. He spoke to the other delegates:

> Mr. President, I am a plain man, and get my living by the plough. I am not used to speak in public, but I beg your leave to say a few words to my brother plough-joggers in this house.
>
> I have lived in a part of the country where I have known the worth of good government by the want of it . . . .
>
> Our distress was so great that we should have been glad to snatch anything that looked like a government. Had any person that was able to protect us come and set up his standard, we should all have flocked to it, even if it had been a monarch, and that monarch might have proved a tyrant. So that you see that anarchy leads to tyranny; and better to have one tyrant than so many at once.
>
> Now, Mr. President, when I saw this Constitution, I found that it was a cure for these disorders. It was just such a thing as we wanted. I got a copy of it and read it over and over. I had been a member of the convention to form our own state constitution, and had learnt something of the checks and balances of power; and I found them all here. . . .
>
> I formed my own opinion and was pleased with this Constitution. My honorable old daddy there (pointing to Mr. Singletary) won't think that I expect to be a Congressman, and swallow up the liberties of the people. I never had any post, nor do I want one. But I don't think the worse of the Constitution because lawyers and men of learning, and moneyed men, are fond of it. . . .

Sam Adams Decided to Vote Yes

Sam Adams was sad as he listened to the lively exchanges of opinions. Most of the delegates would not have thought less of Adams, if he had not come to the meetings. His son had died during the first week of the Convention. The meetings were adjourned for one day as a sign of respect, and the delegates attended the funeral.

Sam Adams insisted that he return to work the next day. Citizens had elected him to represent them. It was his duty to participate in the Convention.

Adams' opposition to the Constitution softened as he heard about the changing opinions of his constituents in Boston. These citizens held a meeting at the Green Dragon Inn on Union Street. A large majority voted to back the Constitution if a Bill of Rights would be added to it -- to protect the liberties of citizens against the powers of the government.

Paul Revere reported to Adams about the meeting at the Green Dragon. Adams believed it was his duty to support the wishes of the majority of citizens whom he represented. So he decided to support the Constitution, if pledges were made to add a Bill of Rights.

The arguments of people like Josiah Smith also influenced Adams. He hated anarchy as much as tyranny. There had to be law and order; but, at the same time, there had to be legal guarantees of the rights of citizens.

Sam Adams believed that there could be no effective United States unless there was a central government strong enough to enforce laws and maintain unity. The challenge was to somehow balance the power of the central government with limits on that power, which would protect the rights of citizens and their state governments.

Adams and Hancock Agreed to Cooperate

John Hancock had come to the same conclusion as Adams. He too would back ratification, if he could be certain that a Bill of Rights would be added to the Constitution.

There were rumors that Hancock also had other motives. Some people claimed that Hancock made a deal with the Federalists. In return for his support of the Constitution, they would back him in his campaign to be re-elected as Governor of Massachusetts. Furthermore, so the story goes, they promised to help him win election as the first Vice President under the new Constitution.

Hancock and Adams met and decided to cooperate to win support for the Constitution. Thus, on January 31, Hancock made a speech for the Constitution. Then he presented a series of amendments, which would guard the liberties of citizens and the rights of state governments. Next he pledged to vote for ratification if, in return, the Federalists pledged to support his amendments to the Constitution.

Sam Adams seconded Hancock's proposal and made a speech in favor of the Constitution plus a Bill of Rights. Rufus King, Nathaniel Gorham, and other Federalists at the Convention agreed to the Hancock-Adams proposal.

The hard-line Anti-Federalists were shocked. They had counted on a victory. The sensational speeches by Hancock and Adams suddenly gave hope to the Federalists. It was likely that several delegates would follow Hancock and Adams to vote for ratification.

Massachusetts Ratified the Constitution

The vote on February 6, 1788 was very close. There were 187 votes for the Constitution and 168 against it -- a difference of 19 votes out of a total of 355. Table 1 (page 106) shows how the different counties voted.

Sam Adams and John Hancock probably made the difference in the outcome at the Massachusetts Convention. If they had strongly opposed the Constitution, it most likely would not have been ratified.

The decision in Massachusetts did influence delegates in other states. New Hampshire became the ninth state to ratify on June 21, 1788. On this day, the Constitution was officially approved as the basic law of the United States. Virginia ratified it four days later. New York followed suit one month later. Each of these state conventions ratified the Constitution on condition that certain amendments would be made, as Massachusetts had done.

Notice how narrow the margin of victory was in New Hampshire, Virginia and New York. (See Table 2 on page 106.) If Massachusetts had voted against the Constitution, these other states might not have ratified it.

The Fates of Hancock and Adams and the Bill of Rights

Hancock's popularity soared after the Convention. He was re-elected as Governor. Adams won the position of Lieutenant

Governor. However, Hancock failed miserably in his bid to become Vice President of the United States. His Federalist friends failed to support him, and John Adams (Sam's cousin) won easily. George Washington was the unanimous choice to be President.

The Federalists in Congress fulfilled their pledges to add a Bill of Rights to the Constitution. Ten Amendments were approved by Congress in 1789. The states then approved the amendments, as directed by the Constitution. In 1791, the Bill of Rights became part of the Constitution.

John Hancock continued as Governor of Massachusetts until his death in 1793. Sam Adams took over as Governor until his death in 1803. The two heroes of the American Revolution had not participated in the Constitutional Convention at Philadelphia. They did play critical roles in the contest for ratification of the new plan for government. Without their decisive leadership, the Constitution may not have been accepted.

Reviewing Facts and Main Ideas

1. Why was the Massachusetts Convention very important?
2. Why were John Hancock and Sam Adams very important people at the Massachusetts Convention?
3. What were objections of Anti-Federalists to the Constitution?
4. What were arguments of Josiah Smith in support of the Constitution?
5. Why did Sam Adams and John Hancock decide to vote for ratification?
6. How did the decisions of Adams and Hancock influence the outcome of the Massachusetts Convention?

TABLE 1

Voting by Counties in the Massachusetts Convention

	Yeas	Nays	Location
Suffolk	33	5	east-central (coastal)
Essex	38	6	northeast (coastal)
Middlesex	18	10	east-central
Hampshire	19	33	western
Plymouth	21	6	southeast (coastal)
Barnstable	7	2	southeast (coastal)
Bristol	10	12	southeast (coastal)
Dukes	2	0	southeast (coastal)
Worcester	7	58	west-central
Berkshire	7	15	western
York	6	11	far-northern (Maine)
Cumberland	10	3	far-northern (Maine)
Lincoln	9	7	far-northern (Maine)
	187	168	

*This tabulation of the vote of the convention by counties shows the geographical distribution of the two parties. From Mass. Centinel, Feb. 23, 1788.

TABLE 2

Ratification of the Constitution by Thirteen State Conventions

State	Date of Ratification	Vote	Population at Date of Ratification
Delaware	Dec. 7, 1787	30-0	59,096
Pennsylvania	Dec. 12, 1787	46-23	434,373
New Jersey	Dec. 18, 1787	38-0	184,139
Georgia	Jan. 2, 1788	26-0	82,584
Connecticut	Jan. 9, 1788	128-40	238,141
Massachusetts	Feb. 6, 1788	187-168	378,787
Maryland	Apr. 28, 1788	63-11	319,728
South Carolina	May 23, 1788	149-73	249,073
New Hampshire	June 21, 1788	57-47	141,899
Virginia	June 25, 1788	89-79	747,610
New York	July 26, 1788	30-27	340,120
North Carolina	Nov. 21, 1789	194-77	393,751
Rhode Island	May 29, 1790	34-32	68,829

Interpreting Evidence

Use the information in Tables 1 and 2, page 106, to answer the following questions:

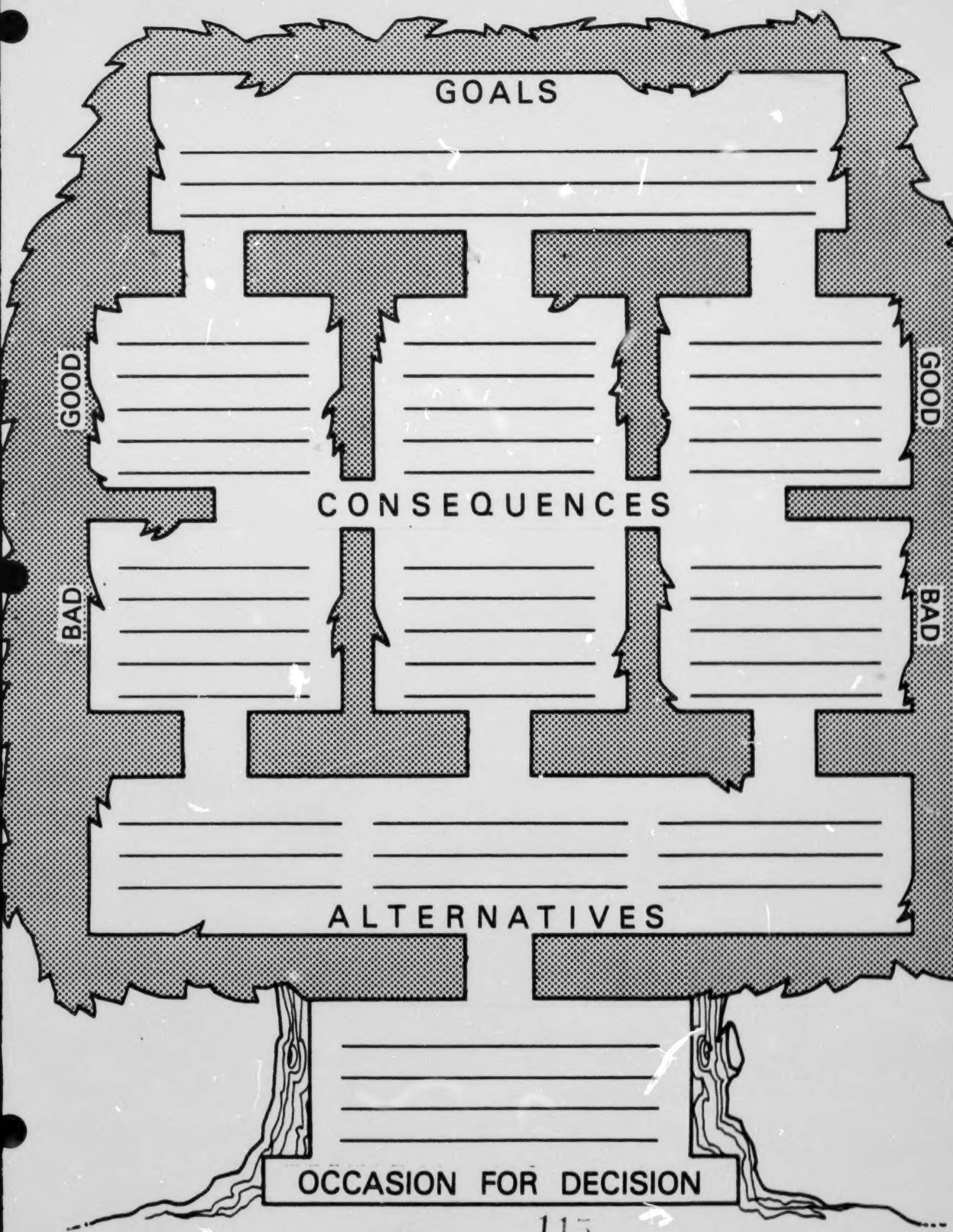
1. Which counties voted for or against ratification?
2. What was the geographical pattern of the votes for and against the Constitution?
3. What decisions about the Constitution were made in state conventions following the Massachusetts Convention?
4. In which states was the margin of victory very narrow?
5. What speculations might be made about the influence of the Massachusetts Convention on the state conventions that came after it?
6. How did the ideas of Hancock and Adams influence the first ten Amendments to the Constitution?

Decision Making Skills

Use the Decision Tree on the next page to help you answer these questions.

1. What was the occasion for decision by Sam Adams?
2. What were the alternatives of Adams?
3. What were likely consequences -- both positive and negative -- of each of Adams' alternatives?
4. What were the most important goals and/or values of Adams in this case?
5. Why did Adams decide as he did?
6. Did Adams make a good decision in this situation? Explain.

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

II-8. Decisions about the Constitution at the Massachusetts Convention, 1788

Preview of Main Points

This lesson tells about the decision of the Massachusetts Convention of 1788 to ratify the Constitution. The issues at the Convention and the contending forces and viewpoints are discussed. The decisive roles of Sam Adams and John Hancock are highlighted.

Connection to Textbooks

This lesson can be used with standard textbook chapters on the Constitutional Convention, which appear in high school textbooks in American history and government. The lesson fits the discussion of ratification of the Constitution, which is included in every textbook. However, the textbook treatments are rather sketchy. This lesson adds depth to the textbook treatment in at least three ways. First, it is a detailed case about one of the state conventions called to ratify the Constitution; none of the standard textbooks includes such a case. Second, this lesson emphasizes politics and political behavior; the typical texts usually have little or no commentary about the political events and strategies of the ratification contest. Third, the lesson focuses on personalities; the typical texts have little to say about the dramatic involvement of certain personalities in the ratification contest.

Objectives

Students are expected to:

1. explain the critical importance of the Massachusetts Convention of 1788;
2. identify objectives of the Anti-Federalists to the Constitution;
3. identify arguments in support of the Constitution;
4. explain the decisions of Adams and Hancock in the Convention;
5. explain the decisive role of Adams and Hancock in the Convention;

6. tell how the decision of the Massachusetts Convention influenced other state conventions;

7. use evidence in tables and documents to support conclusions about actions and decisions at the Massachusetts Convention;

8. analyze the decisions of Adams and Hancock in terms of the Decision Tree;

9. make defensible judgments about the decisions of Adams and Hancock.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" case study, which follows the completion of the textbook treatment of the ratification contest. Having studied a general discussion of events associated with ratification, students can examine in some detail a case study of one state convention.

Opening The Lesson

- Begin by previewing the main points of the lesson for students. This provides students with advanced notice of the material they are to read. You might also explain how this lesson is connected to the material they have just studied in the textbook.

Developing The Lesson

- Have students read the case study. Then conduct a discussion of the "factual review" questions, to make certain that students have understood the main ideas.

- Have students examine Tables 1 and 2. Use the "interpreting evidence" questions to guide student use of these data.

- Students might also be asked to make inferences about connections between the Adams-Hancock proposal to amend the Constitution and the first ten amendments to the Constitution. See question 6 in the list of questions about "interpreting evidence."

Concluding The Lesson

- You might conclude the lesson with a decision making exercise. Have students use the Decision Tree to guide analysis of the decision of Adams and/or Hancock to vote for the Constitution. You might make copies of a blank decision tree and distribute them to students. In addition, you might make and use a transparency of a decision tree as an aid to the discussion. Use the questions on page 107 about decision making skills, to guide the class discussion.

- Students should be encouraged to make positive and/or negative appraisals of the Adams and/or Hancock decisions. They should be required to explain the bases of their judgments in terms of ideas such as the effect of the decision on certain individuals or groups, the fairness of the decision, the practicality of the decision.
- One way to conduct the culminating decision-making exercise is to divide the class into small groups of four or five students. Have each group use a Decision Tree to analyze the decision of either Adams or Hancock. Then have one person from each group make a brief report of the group's analysis.

Suggested Film

TO FORM A MORE PERFECT UNION

Depicts the struggle waged by the Federalists and the anti-Federalists over ratifying the Constitution. Highlights Samuel Adams' and John Hancock's roles in ensuring ratification by the Massachusetts Convention. From DECADES OF DECISION: THE AMERICAN REVOLUTION series, National Geographic Society, 1974, 30 minutes.

II-9. DECISIONS ABOUT THE BILL OF RIGHTS, 1787-1791

The first ten amendments to the U.S. Constitution are known as the Bill of Rights. They were approved by a 2/3 majority of both Houses of Congress in 1789 and ratified by 3/4 of the states on December 15, 1791.

Americans often think of their Bill of Rights as practically a part of the original Constitution, which was written in 1787 and ratified in 1789. This view is an outcome of the way that the first ten amendments were proposed. They were advocated in response to strong demands, voiced during the state ratifying conventions, that a Bill of Rights be added to the Constitution. Critics said that the Constitution did not sufficiently protect individuals against abuses of their civil liberties and rights by the federal government. They insisted that these liberties and rights be specified and included in the Constitution, the basic law of the nation.

When Amendments I-X were included in the Constitution, the people had legal protection of personal freedoms, which the federal government could not abridge or take away. In this way, the Bill of Rights was a check or limit upon the power that could be exercised by the government of the United States.

Citizens were protected from interference by government in the exercise of liberties such as freedom of speech, press and religious choice. Certain rights of people accused of crimes were guaranteed, such as trial by jury and equal and fair treatment according to law. Certain rights were reserved to the state governments and the people.

Americans debated and decided about a Bill of Rights (1) in 1787, at the Constitutional Convention,(2) in 1787-1788, during the debates about ratification of the Constitution, and (3) in 1789 at the first session of Congress under the new Constitution. What decisions about the Bill of Rights were made at these three times, 1787, 1787-88, and 1789? Who were for and against including a Bill of Rights in the Constitution in response to each of these three occasions for decision? How did supporters and opponents of including a Bill of Rights in the Constitution try to justify their positions?

Decisions About the Bill of Rights at the Constitutional Convention, 1787

The main concern of delegates to the Constitutional Convention was drafting a plan for an effective central government. The overriding topic was the powers to be granted to or withheld from the federal government.

Early in the convention, George Mason of Virginia cautioned the delegates to remember "to attend to the rights of every class of the people." Mason was the famous author of the Virginia Bill of Rights of 1776. This statement of civil liberties became a model for the constitution-makers of other states.

The state Bills of Rights seemed to provide ample legal protection for individual liberties under the weak central government established by the Articles of Confederation. However, the aim of the Constitutional Convention was to establish a much stronger central government, which would be superior to the state governments. This new situation seemed to require a federal Bill of Rights to protect individual liberties against the powers of a strong federal government.

Other delegates agreed with Mason about the importance of civil liberties and rights. Most of them, however, saw no need to include in the Constitution a long list of freedoms and rights that were to be protected by law. James Madison of Virginia argued that the state constitutions provided sufficient protection for individual rights. He agreed with James Wilson of Pennsylvania who said that it was unnecessary to deny powers to the federal government, which had not been granted to it. For example, it seemed unnecessary to say that the government could make no law to prohibit the freedom of speech when it had not been granted power to make such a law.

On September 12, near the end of the Constitutional Convention, George Mason forcefully raised the issue of a Bill of Rights. He said that the Constitution should be "prefaced with a Bill of Rights.... It would give great quiet to the people; and with the aid of the State declarations [Bills of Rights], a bill might be prepared in a few hours...."

Elbridge Gerry of Massachusetts moved that a committee be appointed to write a Bill of Rights to be included in the Constitution; Mason seconded the motion.

Roger Sherman of Connecticut spoke against the motion. He declared support for protecting the liberties and rights of the people. He argued, however, that "the State Declarations of Rights are not repealed by this Constitution, and being in force are sufficient [to protect the liberties of the people]."

Mason responded with the reminder that the federal government under the Constitution would "be paramount [supreme] to State Bills of Rights." Thus, the federal government might legally infringe upon or take away those rights.

The Gerry-Mason motion was rejected overwhelmingly by the other delegates. So the final draft of the Constitution did not have a separate Bill of Rights.

The new frame of government, however, did recognize certain basic liberties and rights of the people. Foremost was the right of representative government, which was framed in the name of the people. Article III provided the right of trial by jury. The privilege of the writ of habeas corpus was protected in Article I, Section 9; this is a court order requiring police to explain to a judge why they have arrested and detained an individual. This is an important right, because if authorities have no valid legal reason for detaining a prisoner, they must release the person.

Article I, Section 9, also prohibited the federal government from passing bills of attainder and ex post facto laws. A bill of attainder is a law that inflicts punishment on an individual, who is judged guilty and sentenced without a trial. An ex post facto law allows the government to punish people for acting against a law prior to the time the law was passed. Article I, Section 10, prohibited state governments from passing bills of attainder or ex post facto laws.

The civil liberties and rights included in the Constitution were not enough to satisfy George Mason, who refused to sign the final draft of the Constitution.

After the Constitutional Convention had adjourned, James Madison wrote to Thomas Jefferson, who was serving in Paris as representative of the United States to the government of France. On October 24, 1787, Madison wrote: "Col. Mason left Philad. in an exceeding ill humour indeed.... He returned to Virginia with a fixed disposition to prevent the adoption of the plan [Constitution] if possible. He considers the want of a Bill of Rights as a fatal objection."

Assume that you were a delegate at the Constitutional Convention. Would you have decided for or against the Gerry-Mason motion to include a Bill of Rights in the Constitution? Explain your decision. What arguments would you have presented to convince others to agree with you? (Use the Decision Tree at the end of this lesson as a guide to your responses to these questions.)

Decisions About the Bill of Rights During the Ratification Contest, 1787-1788

In October of 1787, George Mason circulated a statement of his objections to the Constitution. He said:

> There is no declaration of rights; and, the laws of the general government [the government of the United States] being paramount to [superior to] the laws and constitutions of the several states, the declarations of rights in the separate states are no security....
>
> The judiciary of the United States...[will] absorb and destroy the judiciaries of the several states....
>
> There is no declaration of any kind for preserving the liberty of the press, the trial by jury in civil cases, nor against the danger of standing armies in time of peace.

Richard Henry Lee of Virginia was a strong supporter of Mason's position. He refused to be for ratification of the Constitution unless a Bill of Rights was included in it. In 1788, Lee wrote:

> There are certain unalienable and fundamental rights, which in forming the social compact ought to be explicitly ascertained and fixed. A free and enlightened people in forming this compact, will not resign all their rights to those who govern, and they will fix limits to their legislators and rulers, which will soon be plainly seen by those who govern; and the latter will know they cannot be passed unperceived by the former and without giving a general alarm. These rights should be made the basis of every constitution.... I still believe a complete federal Bill of Rights to be very practicable.

Alexander Hamilton of New York argued against Mason, Lee, and their supporters. He wrote (Federalist #84):

> I...affirm that bills of rights...are unnecessary in the proposed Constitution. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed.

James Wilson of Pennsylvania agreed with Hamilton in a speech before his state legislature on October 9, 1787. He said:

> ...a bill of rights...would have been superfluous... to have stipulated with a federal body of our own creation, that we should enjoy those privileges of which we are not divested.... For instance, the liberty of the press...-- what control can proceed from the Federal government to shackle or destroy that sacred palladium of national freedom? If, indeed, a power similar to that which has been granted for the regulation of commerce had been granted to regulate literary publications, it would have been...necessary to stipulate that the liberty of the press should be preserved....
>
> The power of direct taxation has likewise been treated as an improper delegation to the federal government; but when we consider it as the duty of that body to provide for the national safety, to support the dignity of the union, and to discharge the debts contracted upon the collected faith of the States for their common benefit, it must be acknowledged that [the federal government]...ought...to possess every means requisite for a faithful performance of their trust....
>
> If there are errors, it should be remembered that the seeds of reformation are sown in the work itself, and the concurrence of two-thirds of the Congress may at any time introduce alterations and amendments. Regarding it, then, in every point of view...I am bold to assert that it is the best form of government which has ever been offered to the world.

There were hot debates in state ratifying conventions about whether or not to insist upon a Bill of Rights as a condition for approval of the Constitution. Some of the most vigorous and interesting debates occurred at the Virginia ratifying convention. George Mason, Richard Henry Lee, and Patrick Henry were leaders of the anti-Federalist forces in Virginia (those who opposed ratification for one reason or another). James Madison was a major leader of the Federalists (those who supported ratification).

Henry spoke forcefully for liberty of individuals and the rights of state governments:

> Mr. Chairman, the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before.... All rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers....
>
> This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those

> rights. If the people do not think it necessary to reserve them, they will be supposed to be given up....
>
> It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government....

Henry and his associates suggested several amendments to the proposed Constitution. They were similar to the Virginia Bill of Rights of 1776. Their objects were to protect basic liberties and rights of the people and the rights of the state governments against possible abuse by a strong federal government.

James Madison replied: "As far as his [Henry's] amendments are not objectionable, or unsafe, so far they may be subsequently recommended--not because they are necessary, but because they can produce no possible danger."

On June 26, 1788, the Virginia Convention ratified the Constitution with the provision that a Bill of Rights be added as soon as possible. Madison and other Federalists had pledged to promote amendments recommended by the Virginia Convention.

Advocates of a Bill of Rights at several state conventions had won pledges from the Federalists to work for the addition of certain civil liberties to the Constitution. In return for this pledge from the Federalists, these delegates agreed to vote for ratification of the Constitution. Deals of this sort had helped to sway the decision in favor of the Constitution at the ratifying conventions in Massachusetts, New Hampshire, Virginia, and New York.

Assume that you were a delegate at the state ratifying convention in Virginia. Would you have decided for or against ratification on condition that a Bill of Rights would be added to the Constitution as soon as possible? Explain your decision. What arguments would you have presented to convince others to agree with you? (Use the Decision Tree at the end of this lesson as a guide to your responses to these questions.)

Decisions About the Bill of Rights at the First Session of Congress, 1789

Pressures from anti-Federalists led to the proposal that a Bill of Rights be added to the Constitution. Thus, James Madison proposed several amendments to the First Congress of the United States, which met in 1789. Madison said:

> There have been objections of various kinds...against the Constitution, but I believe the great mass of the people who opposed it, disliked it because it did not contain effectual (guarantees against) encroachments on particular rights, and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power; nor ought we to consider them safe, while a great number of our fellow citizens think these securities necessary.

Roger Sherman responded negatively to Madison's proposal. He had argued against a Bill of Rights at the Constitutional Convention and at the ratification convention in Connecticut. He reported that his constituents wanted no Federal Bill of Rights. Rather, they wanted a stable government that would establish an effective union of the states. He agreed with arguments made previously by James Wilson and Alexander Hamilton about the Bill of Rights issue.

James Jackson, a Representative to Congress from Georgia, agreed with Sherman: "I am against inserting a declaration of rights in the Constitution.... If such an addition is not dangerous or improper, it is at least unnecessary."

A majority in Congress seemed ready to agree to most of Madison's proposals, with minor changes. One item, however, concerned the supporters of states' rights within the Federal Union.

Madison proposed this item, which became Amendment X of the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Anti-Federalist leaders wanted to insert the word "expressly" in front of the word "delegated" in Madison's proposal. They were influenced by the wording in Article II of the Articles of Confederation, which said: "Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled."

Madison objected strongly to all attempts to include the words "expressly delegated" in his proposed amendment. He believed that to do so would limit too strictly the power of the new federal government and might render it ineffective, as the Articles of Confederation had been. The large majority in Congress agreed with Madison on this matter, as on the general need to add a Bill of Rights to the Constitution.

Congress approved ten amendments. More than two-thirds of the members voted for the amendments, as required by Article V of the Constitution. The amendments were then sent to the states in accord with Article V. After three-fourths of the states ratified the ten amendments (December 15, 1791), they became part of the Constitution. Thus, a Bill of Rights was added to the Constitution. These first ten amendments are practically part of the Constitution of 1787.

Assume that you were a Representative in the first session of Congress under the Constitution. Would you have decided for or against the general proposal for a Bill of Rights? Would you have decided for or against Madison's proposal, which became the 10th Amendment? Explain your decisions. What arguments would you have presented to convince others to agree with you? (Use the Decision Tree at the end of this lesson as a guide to your response to these questions.)

The Federal Bill of Rights, 1791

The Bill of Rights of 1791 applied only to the Federal Government. These first ten amendments limited the power of the Federal Government in certain ways; they provided legal safeguards to the people of the United States against certain tyrannical acts by the government of the United States. However, as formulated in 1791, the first ten amendments did not apply to the state governments. People in each state had to look to their own state constitutions for guarantees of their civil liberties and rights.

Following is a copy of the Federal Bill of Rights. What are the main ideas of these ten amendments? What liberties or rights do they set forth as not to be taken away by the Federal Government?

FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

SECOND AMENDMENT

A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed.

THIRD AMENDMENT

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

FOURTH AMENDMENT

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

SEVENTH AMENDMENT

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

EIGHTH AMENDMENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

NINTH AMENDMENT

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Examining Decisions About the Bill of Rights

Refer to the Decision Tree at the end of the lesson to guide your responses to the following questions.

1. What alternatives about a Federal Bill of Rights were faced by James Madison on these three occasions?
   a. the Constitutional Convention, 1787
   b. the Virginia Ratifying Convention, 1788
   c. the First Session of Congress, 1789
2. What choices did Madison make about a Federal Bill of Rights on these three occasions?
   a. the Constitutional Convention, 1787
   b. the Virginia Ratifying Convention, 1788
   c. the First Session of Congress, 1789
3. What changes occurred in Madison's decisions about a Bill of Rights from 1787-1789? Explain. How did he change his mind and why?
4. What is your judgment of Madison's decision about a Bill of Rights in 1787, 1788, and 1789? Did he decide correctly on each occasion? Were his decisions good or bad? Explain.

Examining the Federal Bill of Rights, 1791

The first ten amendments might be divided into three categories:

a. those guarding the liberties and rights of individuals from interference by the Federal Government;

b. those defining the legal rights and procedural rights of individuals accused of crimes or otherwise involved in the resolution of disputes under the law;

c. those guaranteeing the retention of rights that are not stated specifically in the Constitution.

1. Which of the first ten amendments belong in category a, described above? Which ones belong in category b? Which of the amendments fit in category c? Explain your responses.

2. Matching Activity. Match the Amendments in List A with the statements about liberties or rights in List B. Write the numeral that identifies each amendment in List A in the correct space next to a statement in List B.

List A

Amendment #
I
II
III
IV
V
VI
VII
VIII
IX
X

List B

______1. Right to keep and bear arms.

______2. Freedom from unreasonable searches.

______3. Protection against cruel and unusual punishments.

______4. Right to trial by jury in criminal cases.

______5. Freedom of speech.

______6. Reserves for the states powers not granted to the Federal Government.

______7. Right to trial by jury in civil cases.

______8. Protection against arbitrary military occupation of a person's home.

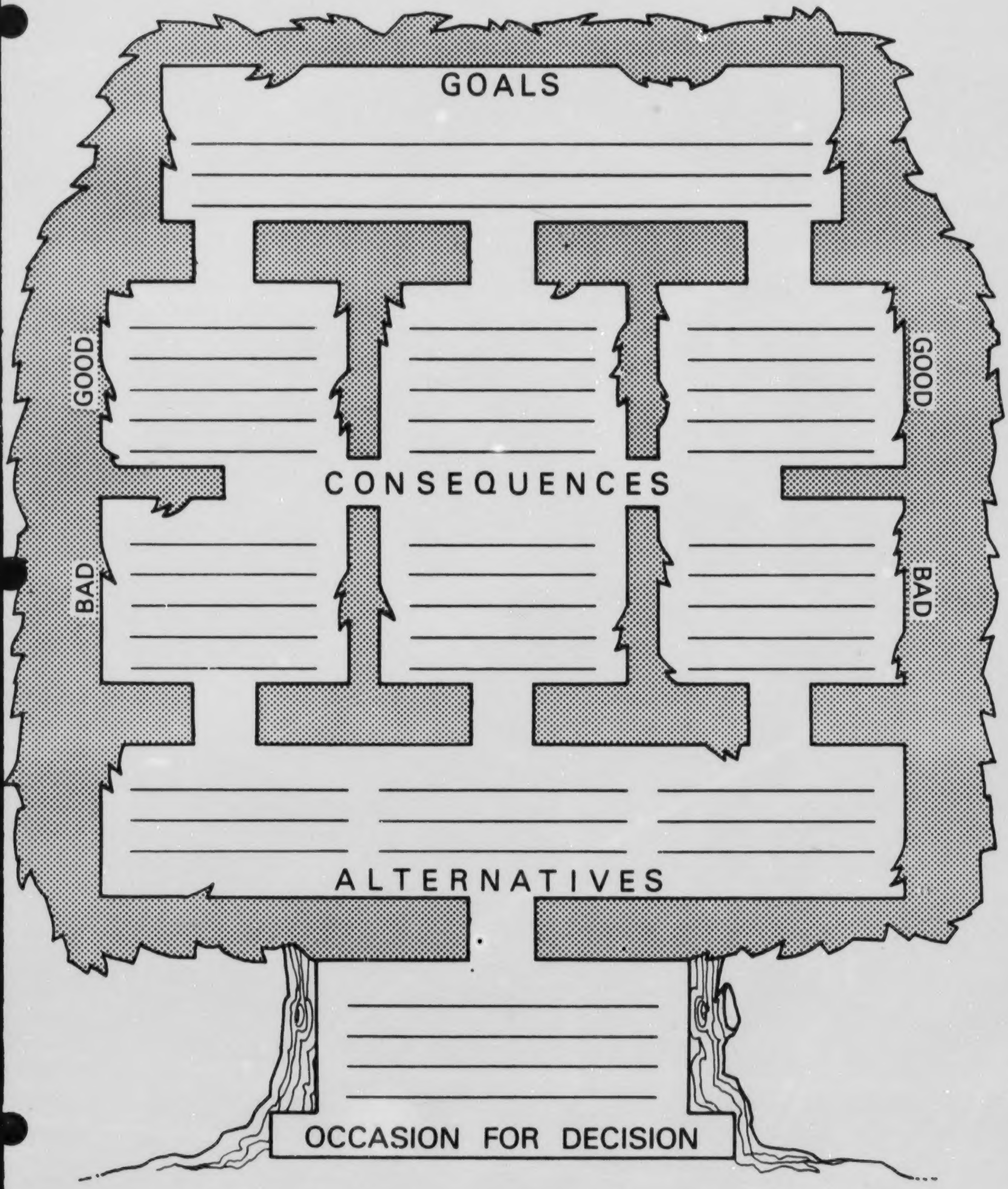
______9. Right to assemble and present public criticisms of the government.

______10. Freedom of religious choice.

______11. Right to due process of the law (legal proceedings carried out according to established rules) with respect to life, liberty, or property.

______12. Freedom of the press.

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

II-9. Decisions About the Bill of Rights, 1787-1791

Preview of Main Points

The birth of the Federal Bill of Rights is the main theme of this lesson. Three occasions for decisions about a Federal Bill of Rights are the focal points. First is a discussion of decisions about a Bill of Rights at the Constitutional Convention, 1787. The next occasion for decisions treated in this lesson is the ratification contest, 1787-1788. Finally, decisions about a Bill of Rights at the first session of Congress are examined.

Connection to Textbooks

All high school American history and government textbooks discuss briefly the arguments of anti-Federalists for a Federal Bill of Rights during the contest over ratification of the Constitution. The discussion is concluded with a statement about the proposal and ratification of the first ten amendments to the Constitution. This lesson can be used to supplement the very brief textbook discussions about the birth of the Bill of Rights. Through this lesson, students can examine alternative arguments for and against a federal bill of rights from the Constitutional Convention to the ratification of Amendments I-X.

Objectives

Students are expected to:

1. examine arguments for and against a Federal Bill of Rights at three points: (a) the Constitutional Convention, 1787, (b) the ratification contest, 1787-1788, and (c) the first session of Congress, 1789;

2. analyze and judge James Madison's decisions about a Federal Bill of Rights during the Constitutional Convention, the ratification contest, and the first session of Congress;

3. practice skills in rational decision making in response to the occasions for decision presented in this lesson;

4. demonstrate comprehension of main ideas in the Federal Bill of Rights, 1791.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson. Tell them that a copy of the Federal Bill of Rights, Amendments I-X, is included at the end of the lesson. They should refer to it as necessary to help them complete the lesson.
- Ask students to read the first page of the lesson, to the point where the first occasion for decision is introduced. Ask them to speculate about why a Bill of Rights was not included in the Constitution of 1787.
- After a brief discussion, inform students that they can check their speculations against information presented in the remainder of the lesson.

Developing the Lesson

- Ask students to read about the first occasion for decision presented in the lesson: decision about the Bill of Rights at the Constitutional Convention, 1787.
- Ask students to respond to the decision making activity at the end of this section of the lesson. This may be done as a self-check activity whereby the student is prompted to think systematically about both sides of the issue about a Federal Bill of Rights. However, you may want to conduct a class discussion about their decision making activity.
- Ask students to read about the second occasion for decision in this lesson: decision about the Bill of Rights during the ratification contest, 1787-1788.
- Ask students to respond to the decision making activity at the end of this section of the lesson. This might be done as a self-check activity, which prompts students to reflect upon the material they have read. However, you might want to ask two students to assume the roles of opponents in the debate about a Bill of Rights. Ask other students to appraise the opposing presentations.
- Ask students to read about the third occasion for decision in this lesson: decision about the Bill of Rights at the First Session of Congress, 1789.
- Ask students to respond to the decision making activity at the end of this section of the lesson. This may be done as a self-check activity, where the student is

prompted to think systematically about the issues presented in the reading assignment. You may want to conduct a class discussion about this learning activity.

Concluding the Lesson

- Assign the remaining pages of the lesson.
- Ask students to analyze and appraise the choices of James Madison about the Bill of Rights during the three occasions for decision presented in this lesson. Use the questions under the heading, "Examining Decisions About the Bill of Rights," to guide the discussion.
- As a way of checking student comprehension of the Bill of Rights, you might assign the last section of the lesson. These learning activities are designed to help students to identify and understand main ideas in the first ten amendments.

Suggested Reading

Donovan, Frank. Mr. Madison's Constitution: The Story Behind the Constitutional Convention (New York: Dodd, Mead & Company, 1965).

This brief, easy to read book describes the involvement of James Madison in major decisions that shaped the Constitution of 1787 and the Bill of Rights.

Rossiter, Clinton. The Grand Convention: 1787 (New York: The Macmillan Company, 1966), pp. 226-315.

This is a very readable scholarly account of the Constitutional Convention and its aftermath. It includes a fine discussion of the issue about including a Bill of Rights in the Constitution.

Rutland, Robert Allen. The Birth of the Bill of Rights, 1776-1791 (Chapel Hill: The University of North Carolina Press, 1955).

This is a detailed account of the origins of the Federal Bill of Rights. Issues and alternative views of the revolutionary era are highlighted.

II-10. IDEAS FROM THE FEDERALIST PAPERS

Arguments about the Constitution started soon after the delegates to the Philadelphia convention sent it to Congress. Opponents of the Constitution were called anti-Federalists. The supporters were known as Federalists.

The most significant writings in support of the Constitution are a collection of 85 newspaper articles, The Federalist Papers. They were arguments against the anti-Federalists, who advised citizens to reject the Constitution.

Alexander Hamilton was worried that the ratifying convention of New York would vote against the Constitution. Governor George Clinton was the powerful leader of the anti-Federalists in New York. He wrote persuasive newspaper articles against the Federalist cause. Hamilton decided to answer him. Thus, the project to write The Federalist Papers began.

From October 1787 until August 1788, Hamilton wrote 54 of The Federalist Papers. James Madison wrote 26 of them, some with the help of Hamilton. John Jay, who withdrew from the project due to illness, wrote five of The Federalist Papers.

The Federalist Papers appeared first in New York newspapers. Many were reprinted in newspapers throughout the thirteen states. All were signed with a pen name, Publius.

The significance of The Federalist Papers was recognized soon after they were published. Thomas Jefferson, for example, wrote to James Madison and said The Federalist Papers were "the best commentary on the principles of government...ever written."

George Washington said: "When the transient circumstances and fugitive performances which attended the crises shall have disappeared, the Work will merit the notice of posterity; because in it are candidly and ably discussed the principles of freedom and topics of government, which will be always interesting to mankind so long as they shall be connected in civil society."

Following are excerpts from 5 of 85 papers that were collected to comprise The Federalist. The portions of 5 papers presented here are excerpts from 15, 39, 51, 70, and 78.

In #15, Hamilton discussed various defects of government under the Articles of Confederation. He emphasized a primary fault of the Articles: "the principle of legislation for States in their corporate or collected capacities" instead of for "the individuals of which they consist."

In #39, Madison discussed the meaning of a federal republic. He concluded that "The proposed Constitution is... neither a national nor a federal constitution, but a composition of both."

In #51, Madison discussed the constitutional principle of separation of powers. He demonstrated that the Constitution grants sufficient power to the government so that public needs may be satisfied. It also limits that power so as to protect civil liberties.

In #70, Hamilton discussed the powers and duties of the President under the Constitution. He argued for a vigorous Chief Executive.

In #78, Hamilton justified the power of judicial review as a basic principle of the Constitution.

THE FEDERALIST, #15 (Hamilton)

To the People of the State of New York:

...We may indeed, with propriety, be said to have reached almost the last stage of national humiliation. There is scarcely anything that can wound the pride, or degrade the character, of an independent people, which we do not experience. Are there engagements, to the performance of which we are held by every tie respectable among men? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge. Have we valuable territories and important posts in the possession of a foreign power, which, by express stipulations, ought long since to have been surrendered? These are still retained, to the prejudice of our interest not less than of our rights. Are we in a condition to resent, or to repel the aggression? We have neither troops, nor treasury, nor government. Are we even in a condition to remonstrate with dignity. The just imputations on our own faith, in respect to the same treaty, ought first to be removed. Are we entitled, by nature and compact, to a free participation in the navigation of the Mississippi? Spain excludes us from it. Is public credit an indispensable resource in time of public danger? We seem to have abandoned its cause as desperate and irretrievable. Is commerce of importance to national wealth? Ours is at the lowest point of declension. Is respectability in the eyes of foreign powers, a safeguard against foreign encroachments? The imbecility of our government even forbids them to treat with us: Our ambassadors abroad are the mere pageants of mimic sovereignty. Is a violent and unnatural decrease in the value of land, a symptom of national distress? The price of improved land, in most parts of the country, is much lower than can be accounted for by the quantity of waste land at market, and can only be fully explained by that want of private and public confidence, which are so alarmingly prevalent among all ranks, and which have a direct tendency to depreciate property of every kind. Is private credit the friend and patron of industry? That most useful kind which relates to borrowing and lending, is reduced within the narrowest limits, and this still more from an opinion of insecurity than from a scarcity of money. To shorten an enumeration of particulars which can afford neither pleasure nor instruction, it may in general be demanded, what indication is there of national disorder, poverty, and insignificance, that could befall a community so peculiarly blessed with natural advantages as we are, which does not form a part of the dark catalogue of our public misfortunes?

This is the melancholy situation to which we have been brought by those very maxims and counsels, which would now deter us from adopting the proposed constitution;...

The great, and radical vice, in the construction of the existing confederation, is in the principle of LEGISLATION for STATES or GOVERNMENTS, in their CORPORATE or COLLECTIVE CAPACITIES, and as contra-distinguished from the INDIVIDUALS of whom they consist....

The consequence of this is, that, though in theory, their resolutions concerning those objects, are laws, constitutionally binding on the members of the union, yet, in practice, they are mere recommendations, which the states observe or disregard at their option....

There is nothing absurd or impracticable, in the idea of a league or alliance between independent nations, for certain defined purposes precisely stated in a treaty; regulating all the details of time, place, circumstance, and quantity; leaving nothing to future discretion; and depending for its execution on the good faith of the parties. Compacts of this kind exist among all civilized nations, subject to the usual vicissitudes of peace and war; of observance and non-observance, as the interests or passions of the contracting powers dictate....

If the particular states in this country are disposed to stand in a similar relation to each other, and to drop the project of a general DISCRETIONARY SUPERINTENDENCE, the scheme would indeed be pernicious, and would entail upon us all the mischiefs which have been enumerated under the first head; but it would have the merit of being, at least, consistent and practicable. Abandoning all views towards a confederate government, this would bring us to a simple alliance, offensive and defensive; and would place us in a situation to be alternately friends and enemies of each other, as our mutual jealousies and rivalships, nourished by the intrigues of foreign nations, should prescribe to us.

But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of a national government, or, which is the same thing, of a superintending power, under the direction of a common council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a league and a government; we must extend the authority of the union to the persons of the citizens--the only proper objects of government....

In our case, the concurrence of thirteen distinct sovereign wills is requisite under the confederation, to the complete execution of every important measure, that proceeds from the union.... Each state, yielding to the persuasive voice of immediate interest or convenience, has successively withdrawn its support, till the frail and tottering edifice seems ready to fall upon our heads and to crush us beneath its ruins.

--PUBLIUS

THE FEDERALIST, #39 (Madison)

To the People of the State of New York:

...If we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is *essential* to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans and claim for their government the honorable title of republic. It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people; and that they hold their appointments by either of the tenures just specified; otherwise every government in the United States, as well as every other popular government that has been or can be well organized or well executed, would be degraded from the republican character. According to the constitution of every State in the Union, some or other of the officers of government are appointed indirectly only by the people. According to most of them, the chief magistrate himself is so appointed. And according to one, this mode of appointment is extended to one of the coördinate branches of the legislature. According to all the constitutions, also, the tenure of the highest offices is extended to a definite period, and in many instances, both within the legislative and executive departments, to a period of years. According to the provisions of most of the constitutions, again, as well as according to the most respectable and received opinions on the subject, the members of the judiciary department are to retain their offices by the firm tenure of good behavior.

On comparing the Constitution planned by the convention with the standard here fixed, we perceive at once that it is, in the most rigid sense, conformable to it....

"But it was not sufficient," say the adversaries of the proposed Constitution, "for the convention to adhere to the republican form. They ought, with equal care, to have preserved the federal form, which regards the Union as a Confederacy of sovereign states; instead of which, they have framed a national government, which regards the Union as a consolidation of the States." ...

...the government...appears to be of a mixed character, presenting at least as many federal as national features.

The difference between a federal and national government, as it relates to the operation of the government, is supposed to consist in this, that in the former the powers operate on the political bodies composing the Confederacy in their political capacities; in the latter, on the individual citizens composing the nation in their individual capacities. On trying the Constitution by this criterion, it falls under the national, not the federal character; though perhaps not so completely as has been understood. In several cases, and particularly in the trial of controversies to which States may be parties, they must be viewed and proceeded against in their collective and political capacities only. So far the national countenance of the government on this side seems to be disfigured by a few federal features. But this blemish is perhaps unavoidable in any plan; and the operation of the government on the people, in their individual capacities, in its ordinary and most essential proceedings, may, on the whole designate it in this relation, a national government.

But if the government be national with regard to the operation of its powers, it changes its aspect again when we contemplate it in relation to the extent of its powers. The idea of a national government involves in it, not only an authority over the individual citizens, but an indefinite supremacy over all persons and things, so far as they are objects of lawful government. Among a people consolidated into one nation, this supremacy is completely vested in the national legislature. Among communities united for particular purposes, it is vested partly in the general and partly in the municipal legislatures. In the former case, all local authorities are subordinate to the supreme; and may be controlled, directed, or abolished by it at pleasure. In the latter, the local or municipal authorities form distinct and independent portions of the supremacy, no more subject within their respective spheres to the general authority, than the general authority is subject to them within its own sphere. In this relation, then, the proposed government cannot be deemed a national one; since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects. It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact; and that it ought to be established under the general rather than under the local governments, or, to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated....

The proposed Constitution, therefore, is, in strictness, neither a national nor a federal Constitution, but a composition of both. In its foundation it is federal, not national; in the sources from which the ordinary powers of the government are drawn, it is partly federal and partly national; in the operation of these powers, it is national, not federal; in the extent of them, again, it is federal, not national; and, finally, in the authoritative mode of introducing amendments, it is neither wholly federal nor wholly national.

--PUBLIUS

THE FEDERALIST, #51 (Madison)

To the People of the State of New York:

To what expedient, then, shall we finally resort for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution? The only answer that can be given is that...the defect must be supplied by so contriving the interior structure of government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places....

...the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions....

There are, moreover, two considerations particularly applicable to the federal system of America, which place that system in a very interesting point of view.

First. In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

Second. It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority--that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens as will render an unjust combination of a majority of the whole very improbable, if not impracticable. The first method prevails in all governments possessing an hereditary or self-appointed authority. This, at best, is but a precarious security; because a power independent of the society may as well espouse the unjust views of the major, as the rightful interests of the minor party, and may possibly be turned against both parties. The second method will be exemplified in the federal republic of the United States. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals or of the minority will be in little danger from interested combinations of the majority. In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government. This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government, since it shows that in exact proportion as the territory of the Union may be formed into more circumscribed Confederacies or States, oppressive combinations of a majority will be facilitated; the best security under the republican forms for the rights of every class of citizens will be diminished; and consequently the stability and independence of some member of the government, the only other security, must be proportionally increased. Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and, as in the latter state even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state will the more powerful factions or parties be gradually induced by a like motive to wish for a government which will protect all parties, the weaker as well as the more powerful....

--PUBLIUS

THE FEDERALIST, #70 (Hamilton)

To the People of the State of New York:

There is an idea, which is not without its advocates, that a vigorous Executive is inconsistent with the genius of republican government. The enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation, since they can never admit its truth without at the same time admitting the condemnation of their own principles. Energy in the Executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks; it is not less essential to the steady administration of the laws; to the protection of property against those irregular and high-handed combinations which sometimes interrupt the ordinary course of justice; to the security of liberty against the enterprises and assaults of ambition, of faction, and of anarchy. Every man the least conversant in Roman story, knows how often that republic was obliged to take refuge in the absolute power of a single man under the formidable title of Dictator--as well against the intrigues of ambitious individuals who aspired to the tyranny, and the seditions of whole classes of the community whose conduct threatened the existence of all government, as against the invasions of external enemies who menaced the conquest and destruction of Rome.

There can be no need, however, to multiply arguments or examples on this head. A feeble Executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution; and a government ill executed, whatever it may be in theory, must be in practice a bad government.

Taking it for granted, therefore, that all men of sense will agree in the necessity of an energetic Executive, it will only remain to inquire what are the ingredients which constitute this energy? How far can they be combined with those other ingredients which constitute safety in the republican sense? And how far does this combination characterize the plan which has been reported by the convention?

The ingredients which constitute energy in the Executive are, first, unity; secondly, duration;

thirdly, an adequate provision for its support; fourthly, competent powers.

The ingredients which constitute safety in the republican sense are, first, a due dependence on the people; secondly, a due responsibility.

Those politicians and statesmen who have been the most celebrated for the soundness of their principles and for the justice of their views have declared in favor of a single Executive and a numerous legislature. They have with great propriety considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have with equal propriety considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people and to secure their privileges and interests.

That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished....

--PUBLIUS

THE FEDERALIST, #78 (Hamilton)

To the People of the State of New York:

We proceed now to an examination of the judiciary department of the proposed government....

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing....

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid....

...The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents....

...whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former....

If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty....

--PUBLIUS

Following are questions that can be used to guide analysis of the ideas in five of The Federalist Papers: #'s 15, 39, 51, 70, and 78.

A. The Federalist, #15 (Hamilton)

1. List at least three weaknesses of government under the Articles of Confederation that are discussed in paper #15.

2. According to Hamilton, what is the main difference between a "league of states" and an effective national government?

B. The Federalist, #39 (Madison)

1. What is Madison's definition of a republic?

2. According to Madison's definition, did the Constitution establish a republican form of government? Explain.

3. Which of the following statements agree with Madison's views? Explain your choice.

   a. The Constitution establishes a confederacy of sovereign states.

   b. The Constitution provides for a consolidation (merger) of the states under one supreme national government.

   c. The Constitution creates a federal system in which the state governments retain power to accept or reject laws of the federal government.

   d. The Constitution establishes a Union of states which is a mixture of federal and national features.

C. The Federalist, #51 (Madison)

1. How is government divided or separated in the federal republic of the United States?

   a. Between one federal (national) government and several state governments.

   b. Among three departments of the federal government--the executive, the legislative, and the judicial.

   c. Both "a" and "b" are correct.

   d. Neither "a" nor "b" is correct.

2. Madison says: "If a majority be united by a common interest, the rights of the minority will be insecure." Why does Madison say that the rights of minorities could be destroyed by majority rule?

3. How does Madison propose to protect the rights of minorities against tyranny by the majority?

4. Does Madison agree with this idea? Government must be strong enough to protect the rights and liberties of citizens, but not strong enough to suppress those civil rights and liberties. Explain.

5. According to Madison, may citizens lose their rights and liberties if government is too weak? Explain.

6. Which of these statements agrees with the views of Madison?

   a. A government should have sufficient power to control citizens who live under it.

   b. A government's power should be limited sufficiently as a safeguard for the rights and liberties of citizens.

   c. Both "a" and "b" are correct.

   d. Neither "a" nor "b" is correct.

D. The Federalist, #70 (Hamilton)

1. What advice does Hamilton offer about the executive branch of government?

2. According to Hamilton, what are three positive outcomes that would occur if citizens followed his advice about the executive branch of government?

3. What are three negative consequences, according to Hamilton, of not following his advice?

E. The Federalist, #78 (Hamilton)

1. According to Hamilton, what is the supreme law of the land?

   a. laws passed by state governments

   b. laws passed by Congress

   c. decisions of the Chief Executive

   d. the Constitution of the United States

2. What is the main duty of judges under the Constitution?

   a. to make laws

   b. to enforce laws

   c. to use the Constitution as the basis for deciding cases in courts of law

   d. to decide cases in courts of law according to the wishes of a majority of the people

3. According to Hamilton, what should judges do with a law passed by Congress that violates the Constitution?

4. How can judges in courts of law protect the rights of minorities against tyranny by the majority?

5. How can judges in courts of law protect the rights of a majority of citizens against oppression by a ruler or a small group of rulers?

F. Identifying Federalist Ideas

Following is a list of statements that were made during the debates about ratification of the Constitution. Identify the statements that seem to fit the Federalist position. Place an "X" in the space next to each Federalist statement. Be prepared to explain your responses.

____ 1. ...the absurdity must continually stare us in the face of confiding to a government the direction of the most essential national interests, without daring to trust it to the authorities which are indispensible to their proper and efficient management.

____ 2. ...a federal government...ought to be clothed with all the powers requisite to complete execution of its trust.

____ 3. Energy in the Executive is a leading character in the definition of good government.

____ 4. We are now fixing a national consolidation. This...is big with mischiefs.

____ 5. This country should never be split into a number of unsocial, jealous, and alien sovereignties.

____ 6. If a majority be united by a common interest, the rights of the minority will be unsecure.... In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature where the weaker individual is not secured against the violence of the stronger.

____ 7. States are the characteristics and the soul of a confederation. If the States be not the agents of this compact, it must be one great consolidated National Government of the people of all the States.

____ 8. The states should respectively have laws, courts, force, and revenues of their own sufficient for their own security; they ought to be fit to keep house alone if necessary; if this be not the case, or so far as it ceases to be so, it is a departure from a federal to a consolidated government....

LESSON PLAN AND NOTES FOR TEACHERS

II-10. Ideas from The Federalist Papers

Preview of Main Points

This lesson is about major ideas of the Federalists, which are presented in five of The Federalist Papers, #'s 15, 39, 51, 70, 78. Students are guided in their analysis of these ideas.

Connection to Textbooks

Standard high school textbooks in American history and government mention The Federalist Papers. However, they do not provide opportunities for analysis of ideas in these essays.

Objectives

Students are expected to:

1. identify main ideas in five of The Federalist Papers;
2. know the Federalist views about weaknesses of government under the Articles of Confederation;
3. know Federalist ideas about characteristics of a good government;
4. distinguish ideas of the Federalists in comparison with the ideas of their opponents.

Suggestions for Teaching the Lesson

This lesson requires careful examination and interpretation of ideas. It is based on questions designed to guide student analysis and discussion of ideas from five of The Federalist Papers. Teachers may ask all students to examine ideas from five Federalist Papers, which appear in this lesson. Or teachers may wish to divide the class into five groups. Each group could examine and discuss one of the five Federalist Papers.

Opening the Lesson

- Tell students about The Federalist Papers--who wrote them, when, why, and with what consequences.

- Inform students of the main points of this lesson.
- Assign students the task of examining one or more of five Federalist Papers in terms of the study questions in this lesson.

Developing the Lesson

- Distribute copies of one or more of five Federalist Papers to students. In addition, distribute the study guide questions that appear at the end of this lesson.
- Have students examine and interpret ideas in these Federalist Papers in terms of the study guide questions in this lesson.
- Have students work individually or in small groups. One option for doing this lesson is to assign one of the five Federalist Papers to each of five sub-groups of your class.

Concluding the Lesson

- Have individuals or representatives of sub-groups report about their analysis of the five Federalist Papers.
- Encourage students to exchange ideas and to react critically to the ideas of one another.
- Conclude the lesson with the activity on the last page of the student material, which requires students to identify ideas of the Federalists in a list of alternative viewpoints about constitutional government.

Suggested Reading

Fairfield, Roy P., editor, The Federalist Papers (Baltimore: The Johns Hopkins University Press, 1981).

The editor has selected and abridged essays written in support of the Constitution in 1787 and 1788 by Alexander Hamilton, James Madison and John Jay.

Rozwenc, Edwin C., and Bauer, Frederick E., editors, Liberty and Power in the Making of the Constitution (Boston: D. C. Heath and Company, 1963).

A book of edited primary sources highlights differences between the Federalists and anti-Federalists. This book was designed for use by high school students.

Answers to Identification Activity

X 1. Alexander Hamilton, *The Federalist*, #23, 1788.

X 2. Alexander Hamilton, *The Federalist*, #23, 1788.

X 3. Alexander Hamilton, *The Federalist*, #70, 1788.

____ 4. Patrick Henry, Delegate to the Virginia Ratifying Convention, 1788.

X 5. John Jay, *The Federalist*, #2, 1787.

X 6. James Madison, *The Federalist*, #51, 1788.

____ 7. Patrick Henry, Delegate to the Virginia Ratifying Convention, 1788.

____ 8. A Pennsylvania Farmer, *Freeman's Journal*, April 1788.

II-11. IDEAS FROM PAPERS OF THE ANTI-FEDERALISTS

Anti-Federalists criticized the Constitution of 1787 and urged its rejection. Some of them, however, were willing to accept the Constitution upon condition that a Bill of Rights be added to it.

The anti-Federalists wrote newspaper articles and made speeches in defense of their position, as their opponents, the Federalists, did. Unlike the Federalist Papers, which were planned and written by collaborators, the anti-Federalist writings were uncoordinated and sporadic. The Federalist papers were published as a book a short time after they appeared originally in newspapers. By contrast, large collections of anti-Federalist writings did not appear until a much later time.

Following are excerpts from five papers of the anti-Federalists. The first was by Richard Henry Lee of Virginia, the second by Melancton Smith of New York, the third by George Clinton of New York, the fourth by William Lenoir of North Carolina, and the fifth by Patrick Henry of Virginia.

Richard Henry Lee belonged to a prominent family in Virginia. He was selected as a delegate to the Constitutional Convention, but refused to serve. He wrote several essays to criticize the Constitution, Letters of the Federal Farmer.

Melancton Smith was a delegate to the New York ratifying convention, who argued against the Constitution. However, he finally voted to ratify it upon condition that a Bill of Rights be added.

George Clinton, Governor of New York, was also an anti-Federalist delegate at the New York convention. He wrote newspaper articles against ratification under the "pen name" of Cato. Clinton's essays stimulated Alexander Hamilton to begin writing The Federalist Papers.

William Lenoir was an outspoken critic of the Constitution as a delegate to the North Carolina ratifying convention.

Patrick Henry, the famous patriot in the War for Independence, was opposed strongly to the Constitution. He spoke against it at the Virginia ratifying convention.

RIGHTS OF CITIZENS MUST BE PRESERVED*

(Richard Henry Lee)

...I still believe a complete federal bill of rights to be very practicable....

...It is in connection with these, and other solid principles, we are to examine the constitution. It is not a few democratic phrases, or a few well formed features, that will prove its merits; or a few small omissions that will produce its rejection among men of sense; they will enquire what are the essential powers in a community, and what are nominal ones; where and how the essential powers shall be lodged to secure government, and to secure true liberty.

In examining the proposed constitution carefully, we must clearly perceive an unnatural separation of these powers from the substantial representation of the people....

...as to powers, the general government will possess all essential ones, at least on paper, and those of the states a mere shadow of power. And therefore, unless the people shall make some great exertions to restore to the state governments their powers in matters of internal police; as the powers to lay and collect, exclusively, internal taxes, to govern the militia, and to hold the decisions of their own judicial courts upon their own laws final, the balance cannot possibly continue long; but the state governments must be annihilated, or continue to exist for no purpose.

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*Paul Leicester Ford, editor, Pamphlets on the Constitution of the United States (Brooklyn, 1888), pp 286-288, 291-292.

REPRESENTATION OF CITIZENS IN GOVERNMENT*

(Melancton Smith)

To determine whether the number of representatives proposed by this Constitution is sufficient, it is proper to examine the qualifications which this house ought to possess, in order to exercise their power discreetly for the happiness of the people. The idea that naturally suggests itself to our minds, when we speak of representatives, is, that they resemble those they represent. They should be a true picture of the people, possess a knowledge of their circumstances and their wants, sympathize in all their distresses, and be disposed to seek their true interests. The knowledge necessary for the representative of a free people not only comprehends extensive political and commercial information, such as is acquired by men of refined education, who have leisure to attain to high degrees of improvement, but it should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are, in general, more competent to than those of a superior class. To understand the true commercial interests of a country, not only requires just ideas of the general commerce of the world, but also, and principally, a knowledge of the productions of your own country, and their value, what your soil is capable of producing, the nature of your manufactures, and the capacity of the country to increase both. To exercise the power of laying taxes, duties, and excises, with discretion, requires something more than an acquaintance with the abstruse parts of the system of finance. It calls for a knowledge of the circumstances and ability of the people in general--a discernment how the burdens imposed will bear upon the different classes.

From these observations results this conclusion--that the number of representatives should be so large, as that, while it embraces the men of the first class, it should admit those of the middling class of life. I am convinced that this government is so constituted that the representatives will generally be composed of the first class in the community, which I shall distinguish by the name of the natural aristocracy of the country....

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*Jonathon Elliot, editor, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (Philadelphia, 1861), Vol. II, pp. 245-249.

From these remarks, it appears that the government will fall into the hands of the few and the great. This will be a government of oppression....

...A system of corruption is known to be the system of government in Europe. It is practised without blushing; and we may lay it to our account, it will be attempted amongst us. The most effectual as well as natural security against this is a strong democratic branch in the legislature, frequently chosen, including in it a number of the substantial, sensible yeomanry of the country. Does the House of Representatives answer this description? I confess, to me they hardly wear the complexion of a democratic branch; they appear the mere shadow of representation. The whole number, in both houses, amounts to ninety-one; of these forty-six make a quorum; and twenty-four of those, being secured, may carry any point. Can the liberties of three millions of people be securely trusted in the hands of twenty-four men? Is it prudent to commit to so small a number the decision of the great questions which will come before them? Reason revolts at the idea.

IN OPPOSITION TO DESTRUCTION OF STATES' RIGHTS*

(George Clinton)

The recital, or premises on which the new form of government is erected, declares a consolidation or union of all the thirteen parts, or states, into one great whole, under the firm of the United States, for all the various and important purposes therein set forth. But whoever seriously considers the immense extent of territory comprehended within the limits of the United States, together with the variety of its climates, productions, and commerce, the difference of extent, and number of inhabitants in all; the dissimilitude of interest, morals, and politics, in almost every one, will receive it as an intuitive truth, that a consolidated republican form of government therein, can never form a perfect union, establish justice, insure domestic tranquility, promote the general welfare, and secure the blessings of liberty to you and your posterity, for to these objects it must be directed: this unkindred legislature therefore, composed of interests opposite and dissimilar in their nature, will in its exercise, emphatically be like a house divided against itself....

From this picture, what can you promise yourselves, on the score of consolidation of the United States into one government? Impracticability in the just exercise of it, your freedom insecure, even this form of government limited in its continuance, the employments of your country disposed of to the opulent, to whose contumely you will continually be an object--you must risk much, by indispensably placing trusts of the greatest magnitude, into the hands of individuals whose ambition for power, and aggrandizement, will oppress and grind you--where from the vast extent of your territory, and the complication of interests, the science of government will become intricate and perplexed, and too mysterious for you to understand and observe; and by which you are to be conducted into a monarchy, either limited or despotic....

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*Paul Leicester Ford, editor, Essays on the Constitution of the United States (Brooklyn, 1892), pp. 255-257.

THE NEED TO LIMIT POWERS OF GOVERNMENT*

(William Lenoir)

My constituents instructed me to oppose the adoption of this Constitution. The principal reasons are as follow:

The right of representation is not fairly and explicitly preserved to the people, it being easy to evade that privilege as provided in this system, and the terms of election being too long....

...It appears to me that, instead of securing the sovereignty of the states, it is calculated to melt them down into one solid empire....

...it appears to me to be a scheme to reduce this government to an aristocracy. It guarantees a republican form of government to the states; when all these powers are in Congress, it will only be a form. It will be past recovery, when Congress has the power of the purse and the sword....

...There was a very necessary clause in the Confederation, which is omitted in this system. That was a clause declaring that every power, etc., not given to Congress was reserved to the states. The omission of this clause makes the power so much greater. Men will naturally put the fullest construction on the power given them. Therefore, lay all restraint on them....

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*Jonathon Elliot, editor, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (Philadelphia, 1861), Vol. IV, pp. 201-206.

NEED FOR A BILL OF RIGHTS*

(Patrick Henry)

This proposal of altering our federal government is of a most alarming nature! Make the best of this new government--say it is composed by anything but inspiration--you ought to be extremely cautious, watchful, jealous of your liberty; for, instead of securing your rights, you may lose them forever. If a wrong step be now made, the republic may be lost forever. If this new government will not come up to the expectation of the people and they shall be disappointed, their liberty will be lost, and tyranny must and will arise. I repeat it again, and I beg gentlemen to consider that a wrong step made now will plunge us into misery, and our republic will be lost....

And here I would make this inquiry of those worthy characters who composed a part of the late federal Convention. I am sure they were fully impressed with the necessity of forming a great consolidated government instead of a confederation. That this is a consolidated government is demonstrably clear; and the danger of such a government is, to my mind, very striking. I have the highest veneration for those gentlemen; but, sir, give me leave to demand--What right had they to say, "We, the people"? My political curiosity, exclusive of my anxious solicitude for the public welfare, leads me to ask--Who authorized them to speak the language of "We, the people," instead of, "We, the states"? States are the characteristics and the soul of a confederation....

Mr. Chairman, the necessity of a Bill of Rights appears to me to be greater in this government than ever it was in any government before.... All rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers....

This is the question. If you intend to reserve your unalienable rights, you must have the most express stipulation; for, if implication be allowed, you are ousted of those rights. If the people do not think it necessary to reserve them, they will be supposed to be given up.

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*Jonathon Elliot, editor, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (Philadelphia, 1861), Vol. III, pp. 156-162.

How were the congressional rights defined when the people of America united by a confederacy to defend their liberties and rights against the tyrannical attempts of Great Britain? The states were not then contented with implied reservation. No, Mr. Chairman. It was expressly declared in our Confederation that every right was retained by the states, respectively, which was not given up to the government of the United States. But there is no such thing here. You, therefore, by a natural and unavoidable implication, give up your rights to the general government.

Your own example furnishes an argument against it. If you give up these powers, without a Bill of Rights, you will exhibit the most absurd thing to mankind that ever the world saw--a government that has abandoned all its powers--the powers of direct taxation, the sword, and the purse. You have disposed of them to Congress, without a Bill of Rights--without check, limitation, or control. And still you have checks and guards; still you keep barriers--pointed where? Pointed against your weakened, prostrated, enervated state government! You have a Bill of Rights to defend you against the state government, which is bereaved of all power, and yet you have none against Congress, though in full and exclusive possession of all power!

Following are questions that can be used to guide analysis of ideas expressed in papers of the anti-Federalists, which were written between October 1787 and April 1788.

A. Rights of Citizens Must Be Preserved (Richard Henry Lee of Virginia)

1. According to Lee, what would happen to state governments under the Constitution of 1787?
2. According to Lee, what would happen to the rights and liberties of citizens under the Constitution of 1787?
3. According to Lee, how could the Constitution of 1787 be amended to improve it?

B. Representation of Citizens in Government (Melancton Smith of New York)

1. What are two main objections of Melancton Smith to the Constitution of 1787?
2. Which of the following statements agree with Smith's ideas?
    a. A government should be led by aristocrats.
    b. Elections of representatives to government should not occur very often.
    c. There should be a large number of representatives in government.
    d. Aristocrats should not be members of the legislature.

C. In Opposition to Destruction of States' Rights (George Clinton of New York)

1. What does Clinton mean by a "consolidation" of the states?
2. Does Clinton favor or oppose "consolidation"? Explain.

D. The Need to Limit Powers of Government (William Lenoir of North Carolina)

1. Why did Lenoir oppose the Constitution of 1787? List four reasons.

2. Does Lenoir oppose or support the idea of a "consolidated" government? Explain.

3. How would Lenoir improve the Constitution of 1787?

E. Need for a Bill of Rights (Patrick Henry of Virginia)

1. Why does Henry object to the words "We the people" in the Preamble to the Constitution?

2. Why does Henry call for a Bill of Rights to be added to the Constitution? List at least three reasons.

3. Does Henry seem to fear a tyranny of the majority more than tyranny by a few powerful leaders in government? Explain.

F. Identifying Anti-Federalist Ideas

Following is a list of statements that were made during the debates about ratification of the Constitution. Identify the statements that seem to fit the anti-Federalist position. Place an "X" in the space next to each anti-Federalist statement. Be prepared to explain your responses.

____1. I am against inserting a declaration of rights in the Constitution.... If such an addition is not dangerous, it is at least unnecessary.

____2. A bill of rights...serves to secure the minority against the usurpation and tyranny of the majority.

____3. The...new form of government...declares a consolidation or union of all the thirteen parts, or states, into one great whole.... It is an intuitive truth that a consolidated republican form of government [will lead]...into a monarchy, either limited or despotic.

____4. ...the vigor of government is essential to the security of liberty.

____5. There is no quarrel between government and liberty; the former is the shield and protector of the latter. The war is between government and licentiousness [disorder]...and other violations of the rules of society, to preserve liberty.

____6. That this is a consolidated government is demonstrably clear; and the danger of such a government is... very striking. [The state governments must give up to Congress] the powers of direct taxation, the sword, and the purse.

LESSON PLAN AND NOTES FOR TEACHERS

II-11. Ideas from Papers of the Anti-Federalists

Preview of Main Points

This lesson is about main ideas of the anti-Federalists, which are presented in five papers. Students are guided in their analysis of these ideas.

Connection to Textbooks

Standard high school textbooks in American history and government mention ideas of the anti-Federalists. However, these ideas are not discussed in detail. Furthermore, students are not provided with opportunities to analyze these ideas.

Objectives

Students are expected to:

1. identify main ideas in five of the anti-Federalist papers;
2. know the anti-Federalist views about dangers associated with the Constitution of 1787;
3. know anti-Federalist views about characteristics of a good government;
4. know anti-Federalist ideas about how best to protect civil rights and liberties;
5. distinguish ideas of the anti-Federalists from those of the Federalists.

Suggestions for Teaching the Lesson

This lesson requires careful examination and interpretation of ideas. It is based on questions designed to guide student analysis and discussion of ideas from five papers of the anti-Federalists. Teachers may ask all students to examine ideas from five anti-Federalist papers, which appear in this lesson. Or teachers may wish to divide the class into five groups. Each group could examine and discuss one of the five anti-Federalist papers.

Opening the Lesson

- Tell students about the anti-Federalist papers--who wrote them, when, why, and with what consequences.
- Inform students of the main points of the lesson.
- Assign students the task of examining one or more of the five anti-Federalist papers in terms of the study questions in this lesson.

Developing the Lesson

- Distribute copies of one or more of five anti-Federalist papers to students. In addition, distribute the study guide questions that appear at the end of the lesson.
- Have students examine and interpret ideas in these anti-Federalist papers in terms of the study guide questions in this lesson.
- Have students work individually or in small groups. One option for doing this lesson is to assign one of the five anti-Federalist papers to each of five sub-groups of your class.

Concluding the Lesson

- Have individuals or representatives of sub-groups report about their analyses of the five anti-Federalist papers.
- Encourage students to exchange ideas and to react critically to the ideas of one another.
- Conclude the lesson with the activity on the last page of the student material, which requires students to identify ideas of the anti-Federalists in a list of alternative viewpoints about constitutional government.

Suggested Reading

Schrag, Peter, and Halsey, Van R., editors. The Ratification of the Constitution and the Bill of Rights (Boston: D. C. Heath and Company, 1964).

This is a book of edited primary sources about the clashing ideas of Federalists and anti-Federalists. It was designed for use by high school students.

Storing, Herbert J. *What the Anti-Federalists Were For* (Chicago: The University of Chicago Press, 1981).

This volume presents the political thought of the opponents of the Constitution.

Answers to Identification Activity, Item F

____ 1. Representative James Jackson of Georgia in the First Congress, June 1789.

X 2. Agrippa, pseudonym of an anti-Federalist writer, 1788.

X 3. George Clinton, Governor of New York, 1787.

____ 4. Alexander Hamilton, *The Federalist*, #1, 1787.

____ 5. Arguments of a Federalist, *Virginia Independent Chronicle*, March 12, 1788.

X 6. Patrick Henry, speech at the Virginia Ratifying Convention, April, 1788.

II-12. TIMETABLE OF MAIN EVENTS IN THE MAKING OF THE CONSTITUTION, 1781-1791

Main events associated with the making of the United States Constitution are listed below in chronological order. This list is divided into three parts: (1) events preceding the Constitutional Convention, (2) events of the Constitutional Convention, and (3) events following the Constitutional Convention.

1. EVENTS PRECEDING THE CONSTITUTIONAL CONVENTION

a. March 1, 1781. The Articles of Confederation were ratified by all thirteen states. They went into effect as the plan for government of the United States of America.

b. September 3, 1783. The Treaty of Paris was signed by the United States and Great Britain. This officially ended the American War for Independence. The independence of the United States was recognized and boundaries of the new nation were set.

c. August 7, 1786. Congress discussed proposals for reforming the Articles of Confederation. Proposed amendments recognized the need to strengthen the government of the United States. However, these proposed amendments were not sent to the states for ratification. They did indicate, however, that leaders in the government recognized the need to revise the Articles of Confederation.

d. September 11-14, 1786. Annapolis Convention took place. This meeting at Annapolis, Maryland, was attended by delegates from five states: New York, New Jersey, Delaware, Pennsylvania, and Virginia. The convention issued a report that called upon the thirteen states to send representatives to a new convention at Philadelphia in May 1787 for the purpose of revising the Articles of Confederation.

e. February 4, 1787. Shays' Rebellion was crushed by militia of the state of Massachusetts. This rebellion by poor farmers had gone on for several months. The rebellion and the economic problems that sparked it seemed to exemplify flaws of government under the Articles of Confederation. Thus, Shays' Rebellion influenced Americans to move ahead with plans to reform government under the Articles of Confederation.

f. February 21, 1787. Congress gave official approval for a convention to meet in Philadelphia "for the sole purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alternatives and provisions therein."

2. EVENTS OF THE CONSTITUTIONAL CONVENTION

a. May 25, 1787. The first meeting of the Constitutional Convention was held. George Washington was elected unanimously to serve as president of the Convention.

b. May 29, 1787. The Virginia Plan was introduced to the Convention by Edmund Randolph. This proposal, which reflected the ideas of James Madison, went beyond revision of the Articles of Confederation. It proposed a strong national government to replace the ineffective government under the Articles. The Virginia Plan was a proposal for a new government and constitution.

c. June 15, 1787. William Paterson introduced the New Jersey Plan as an alternative to the Virginia Plan. The New Jersey Plan was designed to maintain equality of representation and voting power of all the states. It called for less changes in the central government than did the Virginia Plan.

d. June 19, 1787. Delegates voted to reject the New Jersey Plan. They continued to discuss a central government of the kind proposed by the Virginia Plan.

e. July 2, 1787. Delegates from smaller and larger states were deadlocked in discussion of how many votes each state should have in the Senate. The Convention was on the verge of breaking up. A committee was appointed to find a solution to the problem.

f. July 16, 1787. The Great Compromise was made to resolve the conflict between smaller and larger states. The compromise provided for equal representation in the Senate (2 per state) and representation based on population in the House.

g. July 17-26, 1787. Delegates completed discussion and modification of the Virginia Plan. Twenty-three resolutions were given to a committee of detail.

h. August 6, 1787. The committee of detail submitted a rough draft of the Constitution to the Convention.

i. August 6-September 8, 1787. Delegates examined and discussed each article of the rough draft of the Constitution. Some parts were changed and additions were made.

j. September 8, 1787. A committee on style was appointed to write a final draft of the Constitution.

k. September 12, 1787. A final draft of the Constitution was presented to the Convention.

l. September 13-15, 1787. Delegates examined the final draft and made a few minor changes.

m. September 17, 1787. Each of the twelve state delegations voted to approve the final copy of the Constitution. However, three of the forty-two delegates present refused to sign it. The Convention formally adjourned.

3. EVENTS FOLLOWING THE CONSTITUTIONAL CONVENTION

a. September 20, 1787. Congress received the proposed Constitution, which had been sent by delegates at the Constitutional Convention.

b. September 28, 1787. Congress voted to send the Constitution to the legislature of each state. Each state was asked to convene a special ratifying convention, which would either approve or reject the Constitution.

c. October 27, 1787. The first of the Federalist Papers appeared in a New York newspaper. During the next six months, a total of 85 Federalist Papers were written and published. They brilliantly analyzed and defended the Constitution. Alexander Hamilton and James Madison were the major authors. John Jay wrote five of the essays.

d. December 7, 1787. Delaware was the first state to ratify the Constitution. The vote was unanimous, 30-0.

e. December 12, 1787. Pennsylvania was the second state to ratify the Constitution. The vote was 46-23.

f. December 18, 1787. New Jersey was the third state to ratify the Constitution. The vote was 38-0.

g. January 2, 1788. Georgia was the fourth state to ratify the Constitution. The vote was 26-0.

h. January 9, 1788. Connecticut was the fifth state to ratify the Constitution. The vote was 128-40.

i. February 6, 1788. Massachusetts was the sixth state to ratify the Constitution. The vote was 187-168.

j. April 28, 1788. Maryland was the seventh state to ratify the Constitution. The vote was 63-11.

k. May 23, 1788. South Carolina was the eighth state to ratify the Constitution. The vote was 149-73.

l. June 21, 1788. New Hampshire was the ninth state to ratify the Constitution. The vote was 57-47.

m. June 25, 1788. Virginia was the tenth state to ratify the Constitution. The vote was 89-79.

n. July 2, 1788. Cyrus Griffin, the president of Congress, recognized officially that the Constitution had been ratified by nine states and thereby was established as the new frame of government of the United States.

o. July 26, 1788. New York was the eleventh state to ratify the Constitution. The vote was 30-27.

p. September 13, 1788. Congress adopted an ordinance that named New York City as the site of the new government under the Constitution. Dates were set for the elections of a President and members of Congress, which were to be carried out according to the new Constitution.

q. April 1, 1789. House of Representatives was organized. Thirty of the fifty-nine members elected to the House were present for this first official meeting. Frederick A. Muhlenberg of Pennsylvania was elected as the Speaker of the House of Representatives.

r. April 6, 1789. The Senate held its first official meeting. Nine of the twenty-two members were present. John Langdon was elected as temporary presiding officer. According to the Constitution, the Senate was to count the ballots cast by presidential electors. This was done. George Washington was declared President of the United States. John Adams was named as Vice-President.

s. April 30, 1789. George Washington was inaugurated as first President of the United States. He took the oath of office prescribed by the Constitution.

t. September 25, 1789. Congress approved twelve proposed amendments to the Constitution. This was the outcome of a process started in June 1789 by James Madison, member of the House of Representatives from Virginia. The aim was to include in the Constitution protection for certain civil liberties and rights. The Secretary of State, Thomas Jefferson, sent these proposed amendments to the states. According to the Constitution, three-fourths of the states had to ratify these proposals in order for them to become amendments.

u. November 21, 1789. North Carolina was the twelfth state to ratify the Constitution. The vote was 194-77.

v. May 29, 1790. Rhode Island was the thirteenth state to ratify the Constitution. The vote was 34-32.

w. March 4, 1791. Vermont was admitted to the United States as the fourteenth state.

x. November 3, 1791. Vermont was the tenth state to ratify ten of the proposed amendments to the Constitution.

y. December 15, 1791. Virginia was the eleventh of the fourteen states of the Federal Union to ratify ten of the proposed amendments to the Constitution. Three-fourths of the states had ratified these ten proposed amendments. Thus, they officially were added to the Constitution. These first ten amendments were called the Federal Bill of Rights.

Using Facts in the Timetable

1. Arranging Events in Chronological Order. The items in List (a) are NOT in chronological order. Rearrange these items so that they appear in chronological order. Write your list of items in chronological order in the spaces provided under the following heading--(b) Events Listed in Chronological Order.

(a) Scrambled List of Ten Events

George Washington Inaugurated as First President of the United States of America
Beginning of the Constitutional Convention
Ratification of the Federal Bill of Rights
Great Compromise Between Larger and Smaller States
Shays' Rebellion Ended
Ratification of the Articles of Confederation
First Federalist Paper Appeared in a Newspaper
Annapolis Convention
Ratification of the United States Constitution
Virginia Ratified the United States Constitution

(b) Ten Events Listed in Chronological Order

____

____

____

____

____

____

____

____

____

____

2. Matching Activity. Match the dates in List A with the events in List B. Write the numeral next to each date in List A in the correct space next to an event in List B.

List A

I March 1, 1781
II September 3, 1783
III August 7, 1786
IV September 11, 1786
V February 21, 1787
VI May 25, 1787
VII May 29, 1787
VIII July 16, 1787
IX August 6, 1787
X September 17, 1787
XI September 28, 1787
XII June 21, 1788
XIII September 13, 1788
XIV April 6, 1789
XV April 30, 1789
XVI September 25, 1789
XVII November 21, 1789
XVIII May 29, 1790
XIX November 3, 1791
XX December 15, 1791

List B

_____(1) Start of the Constitutional Convention
_____(2) Federal Bill of Rights Ratified
_____(3) Congress Sent the Constitution to the States to Be Ratified or Rejected
_____(4) Treaty of Paris Signed
_____(5) Ratification of Articles of Confederation
_____(6) U.S. Constitution Ratified by Nine States
_____(7) Washington Inaugurated as First President of the USA
_____(8) Delegates at the Constitutional Convention Signed the Final Draft of the Constitution
_____(9) Rhode Island Ratified the Constitution
_____(10) First Official Meeting of the U.S. Senate

3. Sentence Completion Activity. Write the correct word or words in each blank in the sentences below.

a. The ______________________________ was signed by Great Britain and the United States to officially end the American War for Independence.

b. The first plan for government of the United States of America was called ______________________________.

c. There were no delegates from the state of ____________________ at the Constitutional Convention.

d. Delegates from five states participated in the ______________________________, which issued a call for a convention in Philadelphia for the purpose of revising the Articles of Confederation.

e. ______________________________ and ________________ ________________ were major authors of the ___________ ___________________, which were written in defense of the new Constitution.

f. The first ten amendments to the Constitution are called __________________________________.

g. The first state to ratify the Constitution was __________________________.

h. The last of the original thirteen states to ratify the Constitution was _____________________________.

i. Debates about a new frame of government at the Constitutional Convention were started with introduction of the _______________________________ Plan.

j. The ______________________________ settled a dispute between the larger and smaller states at the Constitutional Convention.

4. Interpreting Facts in a Timetable. Refer to facts in the "Timetable" to answer the questions below.

   a. Which of the events preceding the Constitutional Convention gave a legal foundation to the Convention? Explain.

   b. Which of the events following the Constitutional Convention indicate the public controversy that was stimulated by the Constitution? Explain.

   c. What examples in the "Timetable" show that Americans in the 1780's tried to settle public controversies through lawful procedures?

   d. Which ten events in the "Timetable" are most important to include in any summary of the creation and ratification of the Constitution? List these events in chronological order. Explain your choices.

LESSON PLAN AND NOTES FOR TEACHERS

II-12. Timetable of Main Events in the Making of the Constitution, 1781-1791

Preview of Main Points

This lesson is a "timetable of events" in the making of the U.S. Constitution. The overview begins with ratification of the Articles of Confederation, March 1, 1781, and ends with ratification of the first ten amendments to the Constitution (the Federal Bill of Rights), December 15, 1791.

Connection to Textbooks

This lesson can be used as an aid to studying textbook chapters about the making of the U.S. Constitution. It can be used to provide students with an overview of events before they read a textbook chapter on the Constitutional Convention. It can be used as a handy guide to key events and dates, to which students might refer as they read a textbook chapter on the Constitutional Convention. This timetable of events can also be used as an aid to reviewing a textbook chapter about the making of the Constitution.

Objectives

Students are expected to:

1. demonstrate ability to use a "timetable" of events to locate facts about the making of the U.S. Constitution;
2. use a "timetable" to answer questions about the chronology of major events in the making of the U.S. Constitution;
3. arrange in chronological order major events in the making of the Constitution;
4. match key events in the making of the Constitution with the dates of those events;
5. interpret facts presented in a "timetable" in order to explain tentatively aspects of major events in the making of the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson

- This lesson might be used as an overview to a textbook chapter about the Constitutional Convention. If so, ask students to read the events in the "timetable" and to raise questions about the making of the U.S. Constitution, which might be answered by a textbook chapter, which would be read after discussing this timetable.

- This lesson might be used as a review of material covered in a textbook chapter about the making of the Constitution. If so, ask students to read the events in the "timetable" and to use the listing as an aid to summarizing and reviewing material covered in the textbook chapter.

Developing the Lesson

- Have students use the "timetable" to complete activities 1-3, at the end of the lesson. These activities are titled: (1) Arranging Events in Chronological Order, (2) Matching Activity, and (3) Sentence Completion Activity.

- Discuss the correct answers with students. See the answer sheet at the end of this lesson plan.

Concluding the Lesson

- Have students complete the activity at the very end of the lesson. It is titled, Interpreting Facts in the Timetable.

- Discuss questions in the final activity with students. This activity involves interpretation and speculation. There may be reasonable differences in the answers of students.

Answers to Activities 1-3 in Lesson II-12

1. Events Below Are Listed in Chronological Order

Ratification of the Articles of Confederation
Annapolis Convention
Shays' Rebellion Ended
Beginning of the Constitutional Convention
Great Compromise Between Larger and Smaller States
First Federalist Paper Appeared in a Newspaper
Ratification of the United States Constitution
Virginia Ratified the United States Constitution
George Washington Inaugurated as First President of the United States of America
Ratification of the Federal Bill of Rights

2. Answers to Matching Activity (Roman Numerals that belong in the spaces in List B.)

(1) VI
(2) XX
(3) XI
(4) II
(5) I
(6) XII
(7) XV
(8) X
(9) XIII
(10) XIV

3. Answers to Sentence Completion Activity

a. Treaty of Paris
b. The Articles of Confederation
c. Rhode Island
d. Annapolis Convention
e. Alexander Hamilton and James Madison
f. The Bill of Rights
g. Delaware
h. Rhode Island
i. Virginia
j. Great Compromise

CHAPTER III

MAIN PRINCIPLES OF GOVERNMENT IN THE CONSTITUTION

Overview for Teachers

This chapter contains 15 lessons. Lessons 1 to 11 are about three basic principles of governmental organization and power embodied in the philosophy and words of the Constitution: (1) federalism, (2) separation of powers, and (3) judicial review. These principles are basic because they "underpin the entire document and establish the character of the American system of government."*

The chapter also contains four lessons on civil liberties and rights. These lessons help students to identify some of the ways the Constitution guarantees personal and political freedoms, to use vocabulary associated with limited government, and to think about civil liberties and rights in theory and practice.

The lessons in this chapter challenge students to find and interpret ideas in the Constitution. They also provide practice in building a vocabulary of constitutional terms that citizens should know. Finally, the lessons raise issues and questions about the Constitution, which have concerned many citizens.

These lessons are not presented as a comprehensive treatment of constitutional principles. They are designed to supplement high school textbook treatments of main ideas of government in the Constitution.

List of Lessons in This Chapter

III-1. The Principle of Federalism

III-2. One Proposal to Change Modern Federalism

III-3. What Does the Constitution Say About Federalism?

III-4. Key Terms for Understanding Federalism

III-5. Separation of Powers and Checks and Balances

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*Jack W. Peltason, Corwin and Peltason's Understanding the Constitution, Eighth Edition (New York: Holt, Rinehart and Winston, 1979), p. 18.

III- 6. The Veto Power: A Weapon in the System of Checks and Balances

III- 7. What Does the Constitution Say About Separation of Powers and Checks and Balances

III- 8. Key Terms for Understanding Separation of Powers and Checks and Balances

III- 9. Principle of Judicial Review

III-10. How Should Judges Use Their Power?

III-11. Key Terms for Understanding the Judicial System

III-12. Constitutional Rights and Liberties

III-13. Opinions About Civil Liberties and Rights

III-14. What Does the Constitution Say About Civil Liberties and Rights?

III-15. Key Terms for Understanding Civil Liberties and Rights

III-1. THE PRINCIPLE OF FEDERALISM

Americans have always been great inventors. Ben Franklin invented bifocal glasses; Robert Fulton, the steamboat; Eli Whitney, the cotton gin; Thomas Edison, the light bulb and phonograph; Henry Ford, the Model T and assembly line; Robert Land, the Polaroid camera.

In 1787 the Framers of the Constitution came up with an important idea. They created our federal system of government with its sharing of powers by the states and the national government.

The Founders created a federal system to solve a tough political problem. They needed to convince fiercely independent states to join together to create a strong central government.

Writing to George Washington before the Constitutional Convention, James Madison laid out the dilemma. He said the creation of "one simple republic" doing away with the states would be "unattainable." Instead, Madison wrote, "I have sought for a middle ground which may at once support a due supremacy of national authority, and not exclude (the states)." Federalism was the answer.

Federalism means the division of governmental powers between the national and state governments. Both levels of government may act directly on citizens through their own officials and laws. Both levels of government derive their power to act from our Constitution. Each level of government has certain subjects over which its powers are supreme. Both levels of government must agree to changes in the Constitution.

Federalism is a major principle in the American Constitution. In this lesson you will study key ideas of federalism. These are:

- two levels of government at work
- a constitutional division of powers
- a sometimes unclear and changing line between national and state powers

Two Independent Levels of Government

The key idea of our federal system is two levels of government -- national and state -- each with independent powers to act on people at the same time. Thus, under federalism, the state of Indiana has formal authority over its residents, but so does the national government in Washington. Indiana residents must obey Indiana laws and national laws. They must pay Indiana taxes and federal taxes.

This is a very different approach to government than the two forms known to the Founders in 1787 -- the confederation and the unitary government. Each of these located government powers in a different place.

Unitary Government. In a unitary government all formal political power rests with a central government. The central government acts directly on the people. Today France and Japan are examples of unitary governments.

Unitary governments may have geographical subdivisions. But these are only administrative parts of the central government. They may be created or abolished at will by the central government. France is divided into units called "departments", but each department is set up and run by the central government in Paris.

Apply Your Knowledge

Which government described below is a unitary government? Why?

1. Great Britain which consists of England, Scotland, Wales and Northern Ireland is controlled by a national government in London, the capital. Great Britain has local governments, which are similar to the governments in American counties and cities. These can be changed at will by the government in London. Is this a unitary system? ______________ Explain. __________

   ____

   ____

2. Mexico has a national government located in Mexico City, the capital. A President and Congress direct the national government. Mexico also has 29 states, each one has its own constitution. Each state has independent powers to collect taxes in their territory. Is this a unitary government? _________ Explain. _____

   ____

   ____

A Confederation. The other form of government known to the Founding Fathers in 1787 was a confederation. A confederation is like an alliance of independent states. In a confederation, the states create and operate a national government. The national government handles certain limited jobs for the states. The national government can do only what the states permit. The national government does not operate directly on the people.

The Founders were very familiar with this approach. The Articles of Confederation, in operation from 1776 to 1781, established the confederation form of government. Under the Articles, for example, the national government could not tax people directly to raise money -- only the states had such power to act directly on the people.

Apply Your Knowledge

1. In a confederation government, all power is held by the central government. TRUE FALSE

2. At the start of our Civil War, the Southern states created their own government and constitution. The preamble to their Constitution declared: "We, the people of the Confederate states, each State acting in its sovereign and independent character . . . do ordain and establish this Constitution."

   (a) According to the preamble who "acted" to create the Confederate constitution? ______________________

   ____

   (b) What evidence is there in the preamble that the constitution was creating a confederate form of government? ______________________

   ____

   ____

Characteristics of Federalism. The Founders drew on ideas from both the confederation and unitary forms of government to create a federation or "federal republic", as they called it. It truly was a new idea. No one at the Philadelphia convention was quite sure what a federal system would look like. At that time, few delegates ever used the word "federalism" to describe the plan they were designing. The Founders were sure, however, that the powers of government had to be divided in a fresh way between a national government and the states.

Since 1787 many nations have adopted a federal system of government. Canada, Australia, India, Switzerland, Germany and Mexico have federal forms of government. In these systems, the exact arrangements vary between the state, or lesser governments, and the central governments.

However, all true federal systems share four characteristics. These characteristics reflect ideas from both the unitary and confederation forms of government.

First, all federal systems give the national government and states some powers to exercise directly on the people.

Second, federal systems recognize that the states have certain rights and powers beyond control of the national government.

Third, federal systems guarantee the legal equality and existence of each state. Each state has a right to be treated equally regardless of their size or population.

Fourth, federal systems have a judicial body to interpret the meaning of their constitution and to settle disputes between the two levels of government (national and state) and between the states.

Apply Your Knowledge

Several examples of our federal system are presented below. Which characteristic of federalism described above, -- the "first", "second", "third" or "fourth" -- fits each example? Be prepared to explain your answers.

1. ________ Montana, with a population of 761,000, has the same number of U.S. Senators as California, with a population of 21,896,000.

2. ________ In 1910, the Supreme Court ruled that the national government could not prevent the state of Oklahoma from moving its capital city from one town to another.

3. ________ The 10th Amendment says that any powers not delegated to the national government "are reserved to the States respectively."

4. ________ Article III of the Constitution says, in part, that the judicial power of the Supreme Court "shall extend . . . to Controversies between two or more states."

5. ________ In 1981 Congress required that when every American man reached the age of 18 he had to register for the draft.

6. ________ Article IV of the Constitution prohibits Congress from creating a new state from territory belonging to one of the existing states without its consent.

Division of Powers By the Constitution

If both the national government and the states have powers in our federal system, who divided these powers between the levels of government? The answer is our Constitution.

Article I, for instance, gives only the national government the power to coin money and to make treaties with other nations. Under the 10th Amendment, however, state governments have traditionally had power over such areas as public health, fire and police protection, local elections, marriages and divorces, and many other areas.

What prevents states from ignoring or contradicting the Constitution when they pass laws? Article VI of the Constitution says that the Constitution and "laws of the United States . . . shall be the Supreme Law of the Land." This statement -- called the supremacy clause -- makes federalism work and prevents chaos.

The supremacy clause means that the powers of the national government are limited within its field; but the national government is supreme. Thus, the states cannot ignore national laws or simply do anything they want. Nor can the states use their powers to oppose national policies or the Constitution itself.

Table 1 gives examples of how the Constitution distributes powers between the national government and the states. The table shows that the Constitution grants some powers only to the national government, some powers only to state governments and some powers to both. Also notice that the Constitution denies some powers strictly to the national government, some to the states and some to both levels.

Apply Your Knowledge

Use Table 1, page 186, to answer these questions.

1. Which level of government is:

   (a) granted power to establish post offices? ____________

   (b) denied power to enter into treaties? ________________

   (c) reserved power to take measures for public health and safety? ______________________________

   (d) denied power to grant titles of nobility? ___________

   (e) granted power to borrow money? ______________________

2. Which level is granted power to provide for an army and a navy? ______________________________

   Find this power in the Constitution (Clue: look under Article I). What Section is it listed in? ______________

   Exactly what does the Constitution say? ______________

   ____

   ____

   ____

3. Which level of government is denied power to impair obligations of contracts? ______________________

   Find this in the Constitution (Clue: look under Article I). What Section is it listed in? ______________

   Exactly what does the Constitution say about contracts?

   ____

   ____

4. Table 1 says state governments can exert powers the Constitution does not give to the national government or prohibit the states from using. Which Amendment confirms this fact?

   ____

A Changing Division of Powers

Table 1 is useful, but it should not mislead you. In some areas the division of powers is as clear as the table shows. For example, no one disputes that only the national government has the power to coin money. However, in other areas the division of powers is not always so clear.

Table 1 shows that state governments have power to regulate commerce within a state and the national government among states. Suppose you own a pickle factory. Your factory only makes pickles in Ohio, but you sell your pickles to stores in several states. Does only the state government have power to regulate your business? Or does the national government also have such power? If both do, whose regulations must you obey if they conflict with each other?

The national government and the states have battled for years over questions about who can regulate commerce. Such questions about federalism are often settled by the Supreme Court.

Thus, the division of powers under federalism is not permantly fixed. In the early 1800's, any attempt by the national government to regulate working conditions in a local factory would have been seen as a violation of states' rights and federalism. Today, as a result of court decisions and government actions, such acts by the national government are widely accepted as part of federalism.

Apply Your Knowledge

1. The division of powers in our federal system does not change.

   TRUE FALSE

2. The national government and the states have battled over the power to ______________________________ for years.

3. Alexander Hamilton discussed the benefits of federalism in the *Federalist Papers*. He said one advantage was that people could shift their support between the national and state levels of government as needed to keep the powers of the two in balance. "If their rights are invaded by either, they can make use of the other as the instrument of redress."

   (a) Did Hamilton favor a federal form of government?

   ____

   (b) Would Hamilton agree that the division of powers between the national government and the states could change? __________ Explain. ______________________

   ____

   ____

   ____

   (c) What role did Hamilton believe the people could play in changing the division of powers between levels of government? ______________________________

   ____

   ____

   ____

   ____

Reviewing and Applying Knowledge About Federalism

You have learned that federalism involves two levels of government (national and state) acting directly on citizens. You also learned how federalism is different from unitary and confederation governments.

1. List the four characteristics found in all true federal systems.

    (a) ______________________________

    (b) ______________________________

    (c) ______________________________

    (d) ______________________________

2. Study Diagram 1. Use the information to answer these questions.

    (a) What does Diagram 1 describe? ______________________________

    ____

    Which of the statements about Diagram 1 are True or False? Be prepared to explain your answers.

    (b) A unitary government acts directly on the people.
    TRUE FALSE

    (c) In a federal system the national government has no power over the states. TRUE FALSE

    (d) In a confederation the central government can act directly on the people. TRUE FALSE

    (e) In a federal system only the states exercise power over the people. TRUE FALSE

3. Table 1 shows the powers granted and denied the national and state governments. Given this division of powers indicate whether the actions listed below are Constitutional or not.

    (a) The United States declares war on a foreign nation.
    YES NO

    (b) The State of Minnesota begins to print its own money.
    YES NO

    (c) Congress spends $5 billion for new army rifles and tanks.
    YES NO

(d) The State of Delaware levies an import tax on all foreign cars coming into the state.

YES NO

(e) The California Board of Elections sets new hours and regulations for voting in the state.

YES NO

(f) Congress passes a law moving the boundary between Idaho and Montana.

YES NO

4. Writing in the Federalist Papers James Madison said that both the state and the national governments "are in fact but different agents and trustees of the people, constituted with different powers."

(a) What did Madison say about the source of state and national government powers? ______________________

____

____

(b) Is the Madison quote an example of the idea of federalism? ____________ Explain. ____________

____

____

5. You have learned that the Constitution divides powers between the national government and the states in our federal system.

(a) What is the "Supremacy clause"? ________________

____

____

(b) Where is this clause found in the Constitution?

____

6. You have learned that the line between national and state government powers is sometimes unclear and disputed. The case study below is an example of the kind of issue that frequently arises in a federal system. Read the case study and answer the questions following it.

The Concorde Dispute

In 1976 France and Britain wanted to land their new supersonic transport plane, called the Concorde, at American airports. Environmental groups in America opposed the idea. They said the planes were too noisy.

President Ford's Secretary of Transportation decided the Concordes could land at New York's Kennedy Airport. However, the national government did not own Kennedy Airport. State government officials in New York and New Jersey ran the airport. They refused to let the Concorde land at their airport.

The national government took the state officials to court. Federal courts eventually ruled in favor of the national government. The courts said the national government had the power to let the planes land in New York.

(a) What power did both national and state officials claim to have? ______________________________

____

(b) Who settled the dispute over powers? ______________

____

(c) Which level of government won the dispute? ________

____

(d) Is this case an example of federalism? ____________

Explain. ______________________________________

____

____

____

____

TABLE 1

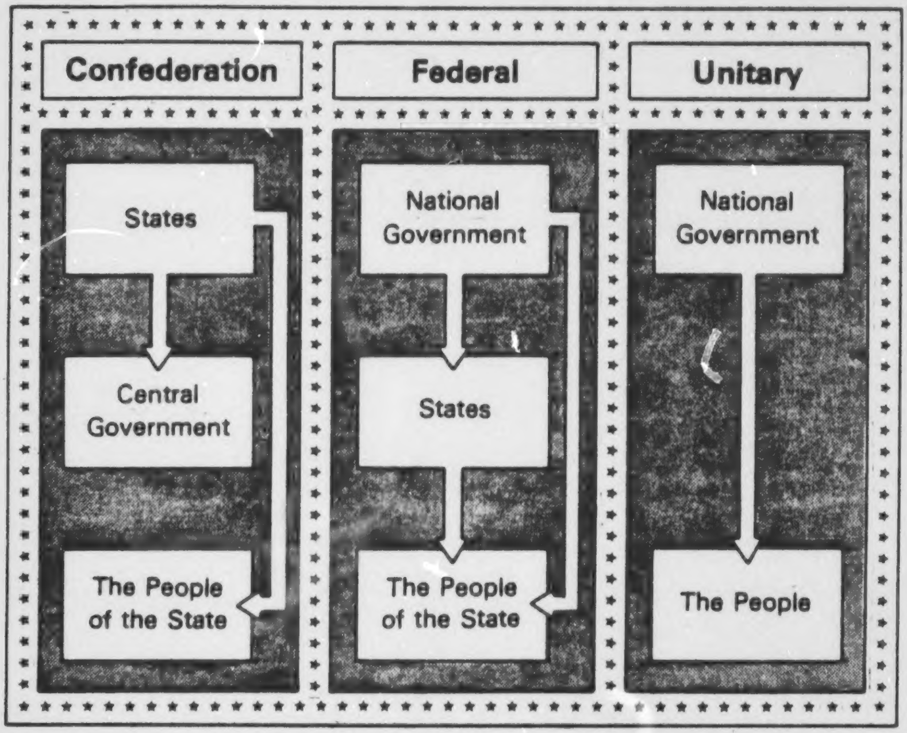
Examples of How the Constitution Divides Powers

	TO NATIONAL GOVERNMENT	TO STATE GOVERNMENTS	TO BOTH LEVELS OF GOVERNMENT
POWERS GRANTED	To coin money To conduct foreign relations To regulate commerce with foreign nations & among states To provide an army and a navy To declare war To establish courts inferior to the Supreme Court To establish post offices To make laws necessary and proper to carry out the foregoing powers	To establish local governments To regulate commerce within a state To conduct elections To ratify amendments to the federal Constitution To take measures for public health safety, & morals To exert powers the Constitution does not delegate to the national government or prohibit the states from using	To tax To borrow money To establish courts To make and enforce laws To charter banks and corporations To spend money for the general welfare To take private property for public purposes, with just compensation
POWERS DENIED	To tax articles exported from one state to another To violate the Bill of Rights To change state boundaries	To tax imports or exports To coin money To enter into treaties To impair obligations of contracts To abridge the privileges or immunities of citizens (14th Amendment)	To grant titles of nobility To permit slavery (13th Amendment) To deny citizens the right to vote because of race, color, or previous servitude (14th Amendment) To deny citizens the right to vote because of sex (19th Amendment)

Table adapted from Robert L. Lineberry, Government in America (Boston: Little, Brown and Company, 1981), p. 93

DIAGRAM 1

Different Forms of Government


Confederation
Federal
Unitary
States
Central Government
The People of the State
National Government
States
The People of the State
National Government
The People

LESSON PLAN AND NOTES FOR TEACHERS

III-1. The Principle of Federalism

Preview of Main Points

This lesson introduces students to three basic ideas about the principle of federalism. These are that federalism involves (1) two levels of government at work, (2) a Constitutional division of powers and (3) changing relationships between national and state powers. The lesson requires students to apply what they learn by working with examples of these key ideas.

Connection to Textbooks

Federalism is a complex idea. This lesson contains information along with practice exercises that reinforce textbook discussions of federalism. It further develops ideas about federalism found in textbooks. It can be used to introduce chapters or discussions about federalism or for practice and reinforcement after students have studied the topic.

Objectives

Students are expected to:

1. know the basic definition and distinguishing characteristics of federalism;
2. identify examples and non-examples of unitary and confederation governments;
3. explain the contributions to federalism of unitary and confederation approaches to government;
4. identify examples according to the constitutional division of powers between the national government and state governments;
5. understand that the constitutional division of national and state powers is not always clear and changes over time.

Suggestions for Teaching the Lesson

This is a concept learning lesson. It is designed to present the concept of federalism to students through the use of definitions and examples. Students are asked to apply definitions to the organization and interpretation of information. Students complete a set of activities or "application exercises" at the end of each main section of the lesson and again at the end of the lesson.

Opening the Lesson

- Tell students the main point and purposes of the lesson, so that they know it focuses on a major principle of the U.S. Constitution -- federalism.
- Discuss the statement by James Madison on the first page of the lesson. Ask them what this statement has to do with the principle of federalism.

Developing the Lesson

- Have students work independently through each of the main sections of the lesson. Each section is about a major feature of federalism.
- Require students to complete the application exercise that follows each of the sections of the lesson.
- You could discuss student responses to each of the application exercises before having them move on to the next section of the lesson. Or you may wish to have them complete all the exercises before discussing them together.

Concluding the Lesson

- Have students complete the application exercise at the end of the lesson -- "Reviewing and Applying Knowledge About Federalism."
- Conduct a class discussion of this application exercise. Keep in mind that alternative answers to some of the items may be acceptable. Students should be able to present a defensible reason for choosing their answer.

III-2. ONE PROPOSAL TO CHANGE MODERN FEDERALISM

Our Constitution created a federal system. Federalism divides authority between two levels of government -- the national government and our 50 state governments. Stand in Texas, or anywhere else in our country, and you are subject to the authority of both the national government and a state government.

But where does the balance of power in our federal system lie? How do state governments and the national government relate to each other? Answers to these questions have varied over our 200 year history because our federal system has changed.

Since the 1930's the national government has gained considerable power at the expense of state governments. (Note: We often call the national government the federal government.) In 1982 President Ronald Reagan proposed a controversial plan to slow down the flow of power to Washington.

In this lesson you will study Reagan's plan, the historical context of the plan and the reaction of lawmakers and governors to proposed changes in federal-state relations. You will learn that federalism is not simply an abstract idea but a principle of government that directly shapes modern political life and debate.

Events Leading to the Reagan Proposal

In large part the President's plan was a reaction to changes in federalism. Since the 1930's the balance of power in the federal system had been shifting toward the national government.

A Limited Role. At first in our history the federal government's role was very narrow. Mainly, the national government provided military defense, conducted foreign policy and delivered mail. States were thought to be responsible solely for schools, law enforcement, most road building and other matters not reserved for the national government.

Growth of National Power. The Great Depression of the 1930's was a period of basic changes in American federalism. Millions were out of work and hungry. Chaos threatened. President Franklin Delano Roosevelt took office in 1932 with the promise to put people back to work. FDR's "New Deal" policies created many federal government programs and agencies to deal with the nation's economic crisis. Among these was the social security system. A trend had begun.

During the late 1950's and through the 1960's, the federal government's authority continued to grow. Expansion of federal power during this period occurred in part because of the unwillingness or inability of state governments to deal with pressing social and environmental concern. For example, discrimination against blacks in voting by southern states led to passage of the Voting Rights Acts of 1965, 1970 and 1975. These laws weakened traditional state authority over voter qualifications in favor of uniform national rules. In the same way, the failure of state governments to deal with environmental problems led to the development of new federal regulations.

Thus, by the early 1970's the federal government had acquired even more responsibilities. These included such things as federal aid to education, enforcement of the right to vote, prohibition of racial discrimination in public accommodations, cleaning up of polluted air and rivers, assistance to cities for public transportation and programs to renovate urban slums.

Growing Financial Influence. Many of the new responsibilities Washington assumed were actually left to the states to carry out with federal money. This money began going to the states through federal aid programs.

Federal aid became available for school breakfast programs, police training, mental health services, public housing, disaster relief, airport construction and hundreds of other things. The graph on page 194 shows how federal aid grew since the Great Depression.

Along with federal aid came new regulations. The "Feds" (as they became known) started using federal aid programs to influence state and local government policies. To obtain federal aid cities and states had to conform to a host of new federal guidelines. Federal guidelines were aimed at preventing states, cities and local businesses from engaging in discrimination and at influencing them to go along with various national programs. By the early 1970's a backlash was starting.

A Reaction Begins. Many state and local leaders were upset with increasing federal regulations and red-tape. Of course, these same leaders recognized that state and local governments needed federal money. But many also agreed with a Colorado governor who said that cities, counties and states were "tired of playing 'Mother May I' with federal bureaucrats."

In 1969, President Richard Nixon first called for a "New Federalism"-in which power, funds and responsibility will flow from Washington to the states." By 1972 Nixon actually succeeded in changing the way some federal money went to the states.

In 1982 President Reagan and his advisors sensed the time was right to push for more fundamental changes in federalism. Thus, Reagan presented his plan. Reaction came swiftly.

Response to the Reagan Plan

President Reagan's speech set off a nationwide debate about modern federalism. Many governors liked the plan -- at least in theory. Governor Snelling of Vermont called the proposal "bold and imaginative, showing remarkable courage and leadership."

Others were more skeptical. They wanted to study details of the plan. "I'd have to look at that horse's mouth and evaluate its teeth," said Governor Bill Clements of Texas. "I'm not going to buy a pig in a poke." The table on page 195 shows how several other governors reacted to the President's plan.

Reactions from Congress were lukewarm at best. Many lawmakers said the Reagan plan would allow states to kill social programs that Congress had set up and protected for decades.

Other lawmakers pointed out that the existing federal-state financial arrangements tended to equalize differences between rich and poor states in support of education, health and welfare programs. They argued the Reagan plan did not allow for such equalization and would benefit the "have" states and penalize the "have not" states. They feared reorganization of federal-state relations could set off vast migrations from states that could not afford welfare programs to states that could.

In addition, many lawmakers worried that Reagan's plan would mean a loss of Congressional power. A "New Federalism" could require Congress to give up control of many federal programs. Lawmakers knew they could use those programs to aid their own states and districts. One member said: "It's just great political fodder to be able to go back home and say I built that bridge."

The reaction in Congress was important. For the changes proposed by Reagan would have to be put into effect by Congress. By late 1982, it became clear that the major swap the President called for was not likely to occur quickly. Thus, while Reagan's plan had stimulated a lot of thinking about our federal system, the general direction of federalism (begun fifty years earlier) was not going to be changed by one speech.

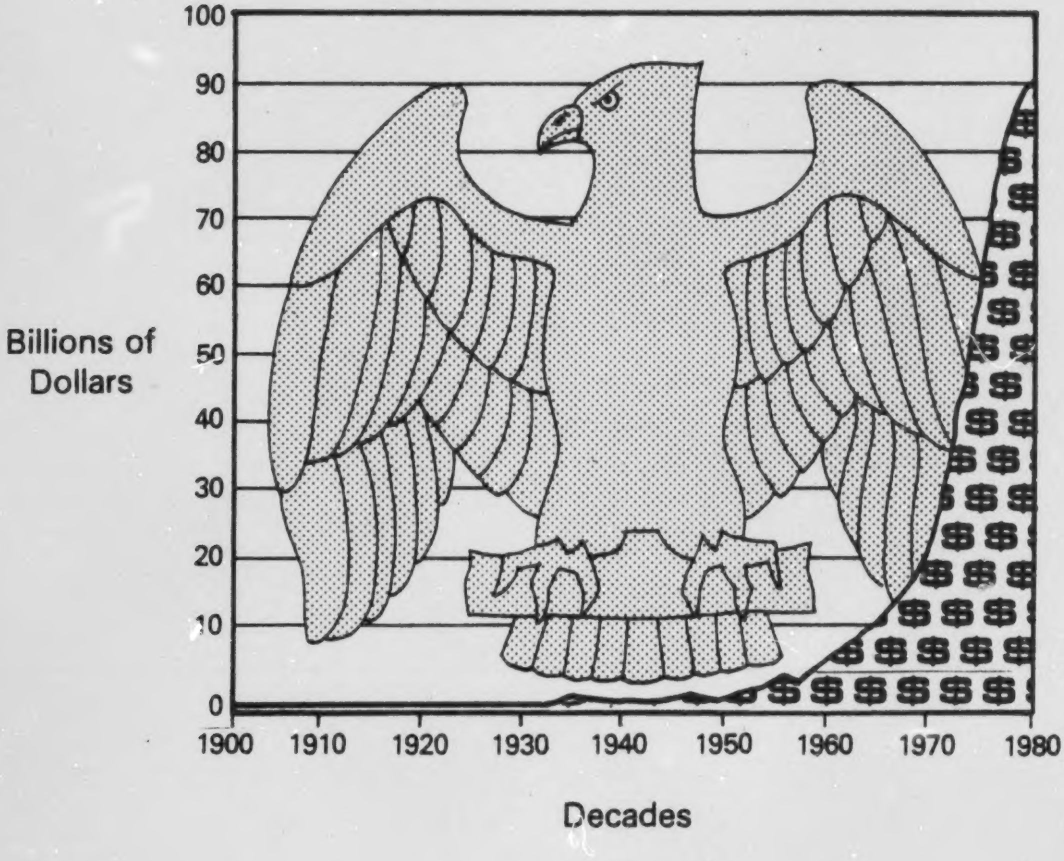
Review Facts and Main Ideas

1. What swap did President Reagan propose in his 1982 speech?
2. Describe the national government's role in the federal system at the start of our history.
3. When and why did the national government's role in the federal system begin to grow?
4. How did Congress react to President Reagan's new plan?

Interpreting Evidence

1. Study the graph on the next page and answer these questions:
    a. What happened to federal aid to state and local governments between 1900 and 1930?
    b. Approximately when did federal aid first begin to increase? What events could explain this increase? (Use information in the case study to answer.)
    c. In which ten-year period has federal aid increased most rapidly?
2. Read the governors' remarks in the table on page 195 and answer these questions:
    a. Which two governors supported President Reagan's plan?
    b. What were the main arguments of those favoring the plan?
    c. Which governor clearly opposed the plan and which governor seemed to have mixed feelings toward the plan?
    d. What are your judgments of the governors' responses to Reagan's plan? With whom do you agree or disagree?

Federal Aid to State and Local Governments



Governors' Responses to Reagan's New Federalism Plan

Hugh Gallen (New Hampshire)

"A state-federal swap that . . . can be made . . . only by tearing not just the fat, but the flesh and blood from essential programs--so that the states are left to assume responsibilities for the burial of the carcass--is not good federalism and is not good government."

Bruce Babbitt (Arizona)

"The President's proposal is a long-overdue attempt to reduce the size and scope of the federal government. The states are fully capable and competent to administer many programs that are now handled at the federal level."

George Busbee (Georgia)

"I believe . . . the President . . . see(s) federalism as a means by which to balance the federal budget by 'dumping' federal domestic programs on the backs of state and local government."

Richard Lamm (Colorado)

"I favor the proposal to shift some federal programs to the states if we get the . . . revenues to help finance them. I want Washington thinking about . . . the Middle East and inflation -- not about pot-holes and how many calories are in a school lunch program."

Source: U.S. News & World Report, March 8, 1982, p. 50.

LESSON PLAN AND NOTES FOR TEACHERS

III-2. One Proposal to Change Modern Federalism

Preview of Main Points

This lesson describes President Ronald Reagan's attempt to make changes in national-state government relations. The core of Reagan's proposal, the historical context of the plan, and the reaction by Congress and state governors are discussed. A chart and relevant quotes from governors are part of the case study.

Connection to Textbooks

This lesson can give students an opportunity to apply basic ideas about federalism they have learned to a contemporary political event. The lesson demonstrates that federalism is not simply an abstract idea but a vital principle of government shaping modern political life.

Objectives

Students are expected to:

1. identify the key points of President Reagan's plan to change the balance in the federal system by shifting national government programs to the states;
2. explain the historical trends that set the context for Reagan's plan;
3. identify reactions to the Reagan plan by governors and Congress;
4. use evidence in a graph to draw conclusions about the growth of the national government's role in the federal system;
5. make judgments about Reagan's plan in terms of its impact on federalism and on Congress;
6. develop an understanding that in our federal system national-state government relations are dynamic, not fixed.

Suggestions for Teaching the Lesson

This lesson can give students an opportunity to use what they have learned about federalism from their textbooks to consider a contemporary issue related to federalism.

Opening the Lesson

- Preview the lesson for students by explaining its purpose and how it is linked to material they are studying.

Developing the Lesson

- Have students read the case study. Conduct a discussion of the questions in "Reviewing Facts and Main Ideas" to ensure students have understood the main ideas.
- Have students examine the graph and answer the questions under "Interpreting Evidence."

  You might make a transparency of the graph and use it as an aid to class discussion.
- Have students read the governors' comments in the table. Conduct a class discussion of the appropriate questions under "Interpreting Evidence."

Concluding the Lesson

- Encourage students to use their knowledge of federalism along with material in the case study and the table to make positive or negative judgments about Reagan's plan.
- Students should be required to explain the bases of their judgments in terms of criteria having to do with (a) effect of the plan on certain individuals or groups and (b) fairness.

III-3. WHAT DOES THE CONSTITUTION SAY ABOUT FEDERALISM?

Read each of the following statements. Decide whether or not each statement describes a situation that agrees with the words of the U.S. Constitution. If so, answer YES. If not, answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment of the Constitution, which supports your answer. Write this information on the line below each item.

CLUE: Answers to these items can be found in Articles I, IV, and VI or in Amendment X.

1. Michigan, hard hit by a business recession, has decided to print its own money to stimulate economic activity.

YES NO

___

2. Congress passes a law imposing new regulations upon airlines engaged in interstate commerce (doing business among several states).

YES NO

___

3. Colorado's Scenic Drive Highway has become overcrowded. The State Legislature passes a law forbidding out-of-state drivers from using the highway.

YES NO

___

4. The Governor of North Dakota was very upset with the U.S. Supreme Court's upholding of Congress' power to regulate the strip mining of coal. The Governor has announced that he will not allow the enforcement of the law in his state.

YES NO

___

5. The state legislature of Nevada has been unhappy with the U.S. Postal Service. A law was passed creating the Nevada Postal Service.

YES NO

6. The state of Washington has placed a tax on goods imported or exported through its seaports.

YES NO

7. Lake County, Indiana, has been annexed, in response to its request, by the neighboring state of Illinois.

YES NO

8. The Governor of Montana requested that Kentucky return John Doe to Montana. Doe, who was convicted of murder in Montana, had fled to Kentucky, where he was captured.

YES NO

9. John Jones was legally adopted in the state of Arkansas. After the Jones family moved to Georgia, John was taken from his adoptive parents by the Georgia State Welfare Agency. The Agency claimed it did not recognize Arkansas adoption laws.

YES NO

10. The Federal Government passed a law to establish a single national system of public high schools.

YES NO

LESSON PLAN AND NOTES FOR TEACHERS

III-3. What Does the Constitution Say About Federalism?

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of a main constitutional principle -- federalism. In addition, students should become more familiar with certain parts of the Constitution that pertain to federalism.

Connection to Textbooks

This lesson can be used to reinforce American government textbook treatments of the constitutional principle of federalism. The lesson can be used to supplement American history textbook discussions of main principles of the Constitution, which usually follow treatment of the Constitutional Convention.

Objectives

Students are expected to:

1. demonstrate knowledge of the constitutional principle of federalism by responding correctly with a "YES" or "NO" answer to each item in this lesson;
2. support their response to each item by listing the correct reference in the U.S. Constitution (Article and Section);
3. increase knowledge of which parts of the Constitution pertain to the principle of federalism;
4. practice skills in locating and comprehending information in the U.S. Constitution;
5. increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions For Teaching The Lesson

Opening The Lesson

- Inform students of the main points of the lesson.
- Make sure that students understand the directions for this lesson.

Developing The Lesson

- Have students work individually or in small groups to complete the items in the exercise.
- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding The Lesson

- Ask students to explain what each item in the exercise has to do with the principle of federalism. By doing this, students can demonstrate comprehension of the idea of federalism.
- You may wish to have students examine and discuss in more detail issues and questions associated with the items in this exercise.

Answers

1. NO, Article I, Section 10, Clause 1.
2. YES, Article I, Section 8, Clause 3.
3. NO, Article IV, Section 2, Clause 1.
4. NO, Article VI, Section 2.
5. NO, Article I, Section 8, Clause 7
6. YES, Article I, Section 10, Clause 2.
7. NO, Article IV, Section 3, Clause 1.
8. YES, Article IV, Section 2, Clause 3.
9. NO, Article IV, Section 1.
10. NO, Amendment X. (NOTE: The authority to operate public schools is a power not given to the national government nor prohibited the states by the Constitution. Thus, state and local governments have power under the Constitution to operate public schools.)

III-4. KEY TERMS FOR UNDERSTANDING FEDERALISM

Read each of the sentences in the following two lists, which are labeled "Across" and Down." What word or words should be placed in each of the blanks? Write the correct word or words in the appropriate spaces on the crossword puzzle on page 204.

Across

5. The ______________________ Amendment confirms that the national government's powers are limited and that other powers are reserved to the states.

6. A ____________________________ is an association of sovereign states.

11. Article I, Section 8, Clause 3, gives to Congress its _____________________ power, an important means by which the national government's authority has grown.

12. "Full _____________________________ shall be given in each state to the public Acts...of every other state," according to Article IV, Section 1, of the U.S. Constitution.

Down

1. The ______________________ of power has been a source of conflict between the federal and state governments in the American system of federalism.

2. For the Federal Union to succeed, the U.S. Constitution and national laws must have ____________________________ over the constitutions and laws of the states.

3. The national government's powers are either delegated or ___________________________.

4. Powers possessed only by the national government are referred to as _______________________ powers.

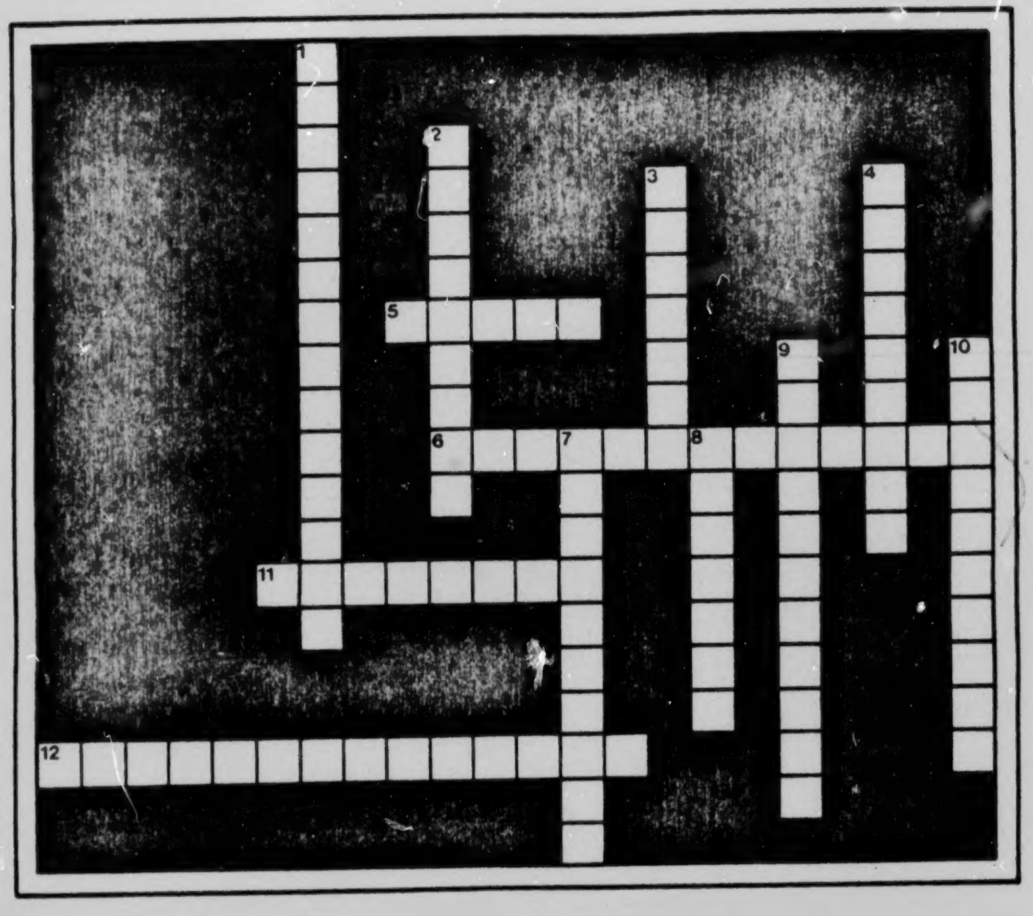
7. __________________________ means a government in which powers are divided or distributed between the national and state governments.

8. The _________________________ clause, or the "necessary and proper clause," has permitted the national government to greatly expand its powers within the federal system.

9. Through ____________________________, the national government has entered areas of government that were once thought to be exclusively the concern of the state governments.

10. The power to tax, possessed by both the state and national governments, is an example of a ______________________ power.

Federalism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LESSON PLAN AND NOTES FOR TEACHERS

III-4. Key Terms for Understanding Federalism

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them understand the Constitution. The key words in this lesson pertain to the constitutional principle of federalism. The lesson is designed to help students acquire and/or reinforce knowledge of words associated with the principle of federalism.

Connection to Textbooks

The words in this lesson are related to discussions of federalism found in American government and history textbooks. Practice in using these words may help students to read certain parts of their textbooks more effectively.

Objectives

Students are expected to:

1. demonstrate comprehension of key words about federalism by supplying the missing words in the lists of statements and using the key words to complete the crossword puzzle on the last page of the lesson;

2. discuss the key words so as to demonstrate knowledge of the principle of federalism.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of this lesson is to provide practice in using key words about an important constitutional principle, federalism.

- Remind students of the need to learn key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheets with the lists of words and the crossword puzzle.
- Have students work individually or in small groups to complete the worksheets.
- Tell students to write the correct word or phrase on each blank in the two lists of words on pages 202-203 and to complete the crossword puzzle on page 204.
- Suggest to students that they might want to use the glossary in their textbook, or other pertinent reference material, to help them complete this lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the crossword puzzle.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

Answers to Crossword Puzzle

Across		Down	
5.	tenth	1.	centralization
6.	confederation	2.	supremacy
11.	commerce	3.	implied
12.	faith and credit	4.	exclusive
		7.	federalism
		8.	elastic
		9.	grants in aid
		10.	concurrent

III-5. SEPARATION OF POWERS AND CHECKS AND BALANCES

Like football fans shouting "DEFENSE," the Founding Fathers were concerned with the need to contain an opponent. To them the opponent was weaknesses of human nature, which could lead to the abuse of power by a strong national government.

The Founders were not very optimistic about their fellow humans. They believed that people, if left unchecked, would seek power and try to dominate each other. Ben Franklin spoke for most of the Founders when he said, "There are two passions which have a powerful influence on the affairs of men: the love of power and the love of money." Alexander Hamilton added, "Men love power."

Given this view of human nature, the Founders faced a dilemma. How could they design a government run by the people and yet prevent abuses of power by the same government as people sought to gain power, wealth or glory at each others' expense?

As usual, James Madison summed up the problem nicely. He pointed out, "In framing a government, which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place, oblige it to control itself."

The Founders built two principles into the Constitution to deal with this dilemma:

(1) a separation of powers among three branches of government, and

(2) a system of checks and balances.

These two principles are related but distinct. They are not the same. How does each principle work? What are the combined effects of these two constitutional principles?

Separation of Powers

Separation of powers means the Constitution distributes powers of national government among three independent branches of government: the legislative, the executive and the judicial. The Founders believed that creating separate branches of government would help limit the powers of the national government and prevent tyranny.

How is power separated among the three branches? The legislative branch (Congress) has power, under the Constitution, to make laws. The executive branch, headed by the President, is granted power to enforce or carry out laws. The Constitution says that the Supreme Court is to head the judicial branch, which has power to interpret and apply the law in federal court cases.

How is the separation of powers achieved? The Constitution separates the branches of the national government in three ways?

(1) in their source of authority,

(2) in how officials in each branch are chosen, and

(3) in how people in each branch hold office.

Source of Authority. Each branch of the national government derives its authority directly from the Constitution, not from one of the other branches. Thus, in our system the President's power does not come from Congress or the courts; it comes directly from the Constitution. This means no branch can take away the powers of any other branch.

Apply Your Knowledge. The Constitution is the source of power for each branch of government. Which Article of the Constitution creates the executive branch? ________________ the legislative branch? ______________________ the judicial branch? ________________________.

Selection of Officials. Top officials in each branch of the national government reach office by different procedures. This is a second way in which the three branches are kept separate.

The President is elected indirectly by the people across the nation through the electoral college system.

Members of Congress are elected directly by the people in their state or district.

Justices of the Supreme Court and other federal judges are an exception. They are appointed by the President with approval of the Senate. However, once appointed they may serve for life. They can be removed only by the impeachment process. In our nearly 200 year history, only four judges have lost office this way. Lifetime tenure helps keep judges independent of the other two branches.

Different selection procedures means government officials are politically independent. Officials in each branch try to satisfy and deal with their own constituency. Thus, a Senator is concerned most about the views of voters in his or her state. The President is concerned with the nation as a whole.

Apply Your Knowledge. Writing in The Federalist (#51) James Madison argued:

> In order to lay a due foundation for that separate and distinct exercise of the different powers of government...it is evident that each department (branch) should have a will of its own; and consequently should be so constituted, that the members of each should have as little agency as possible in the appointment of the members of the others.

(1) In England, the legislative branch (called Parliament) appoints the top executive official (called the Prime Minister). Would Madison have approved this idea for the United States? ____________ Explain. ____________

____

____

____

(2) Why did Madison think it important to choose officials of each branch by different procedures? ____________

____

____

____

Holding Office. Finally, the three branches are kept separate by having officials of each branch hold office independently of the other branches for a specified period of time.

Thus, Senators are elected for a six-year term and Representatives for two-year terms. The President cannot dissolve Congress or remove Senators or Representatives from office.

The President is elected for a four-year term and can be removed by Congress only through the long, difficult process of impeachment. As you read, federal judges serve for life unless impeached.

We take this feature of our national government for granted. Yet it is very different from other types of government. The parliamentary system of government is used in many nations today. In a parliamentary system, there are three branches of government; but the legislative branch is supreme. The executive branch, usually called the Cabinet and headed by a Prime Minister, stays in power only so long as it retains the confidence of the legislature.

Japan has a parliamentary system. The Japanese Constitution states that "the Prime Minister shall be designated from among the members of the Diet (Parliament) by a resolution of the Diet." The Constitution also says that, "If the House of Representatives passes a non-confidence resolution, or rejects a confidence resolution, the Cabinet shall resign."

Apply Your Knowledge. Use what you have learned about separation of powers to answer the following questions.

(1) Our Constitution states: "The House of Representatives shall be composed of members chosen every second year by the people of the several states."

Why is this an example of separation of powers?

____

____

____

(2) Our Constitution states: "...a President of the United States...shall hold his office during the term of four years."

Why is this an example of separation of powers?

____

____

____

Checks and Balances

The Founders built into the Constitution three branches of government kept separate by (1) the source of their authority, (2) how they are selected and (3) how they hold office.

The Founders also created a system of checks and balances. This means each branch of the national government has powers to "check" or "balance" the actions of the others. Under checks and balances, each branch is given some role or share in the actions of the others. One scholar said this system "is as elaborate and delicate as a spider's web." Here are some examples:

- The Senate must approve all the people the President appoints to top jobs in government.
- The Constitution gives the President power to recommend legislation and new programs to Congress.
- The President can veto bills passed by Congress but Congress can override the President's veto by a two-thirds vote of each chamber.
- The Supreme Court can review laws passed by Congress or actions of the President and declare them unconstitutional.

Apply Your Knowledge. Study Table 1 (page 214) and answer these questions.

(1) What is the main idea of Table 1? ______________________

____

(2) According to Table 1, are the statements below true or false? Be prepared to explain your answers.

(a) Checks and balances is an abstract idea, which usually is not used.

TRUE FALSE

(b) Impeachment is one tool in the system of checks and balances.

TRUE FALSE

(c) Congress overrides most vetoes by the President.

TRUE FALSE

(d) The Supreme Court can declare acts of Congress to be unconstitutional.

TRUE FALSE

Conclusion -- Shared Powers

In combination, the principles of separation of powers and checks and balances provide a government of separated institutions (executive, legislative, judicial) that share powers. Thus, each separate branch of the national government has some role or say in the actions of the other. It means no branch can do its job without some cooperation from the others.

Some people have criticized this arrangement. They argue it creates confusion, delays and a lack of direction in American government. Presidents often have complained that separation of powers and checks and balances make it difficult to get things done. Lyndon Johnson, for example, once warned that, "Divided government creates the natural climate for standstill government."

Defenders of the system admit that it can sometimes be inefficient. They argue, however, that inefficiency is the price that must be paid to limit and check the powers of government. They agree with James Madison that "ambition must be made to counter ambition" by giving each separate branch ways to share in the powers of the other branches.

Reviewing and Applying Knowledge About Separation of Powers and Checks and Balances

(1) List three ways the Constitution separates the branches of the national government.

(a) ______________________________

(b) ______________________________

(c) ______________________________

(2) James Madison, writing in The Federalist (#47), declared:

> No political truth is certainly of greater intrinsic value, or is stamped with the authority of more enlightened patrons of liberty, than that...the accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny.

(a) Is Madison talking about the principle of separation of powers or the principle of checks and balances?

____

Explain. ______________________________

____

____

(b) Why does Madison believe the separation of powers is necessary? ______________________________

____

____

(3) In the Federal Republic of Germany the executive head of the government (called the Chancellor) is elected by the legislature (called the Bundestag).

Is this an example of separation of powers? ____________

Explain. ____

____

____

(4) Put an "X" by each item below that is an example of checks and balances. Be prepared to explain your choices.

(a) ____ The Senate must approve all treaties made by the President.

(b) ____ The First Amendment protects freedom of speech.

(c) ____ All Presidential programs depend upon Congress appropriating the money to carry them out.

(d) ____ Congress may propose amendments to the Constitution by a two-thirds vote of each chamber.

(5) Diagram 1 (page 215) summarizes how the three institutions of our national government created by the separation of powers can check and balance one another.

Study Diagram 1 and answer these questions.

(a) Which branch must confirm the President's appointments?

____

(b) How can the judicial branch check the actions of the legislative branch? ____________________

____

(c) How can the legislative branch check the actions of the judicial branch? ____________________

____

____

(d) How can the executive branch influence the judicial branch? ____________________

____

____

____

TABLE 1

The Use of Checks and Balances, 1789-1981

There were 2391 Presidential vetoes of congressional acts.

Congress subsequently overruled 75 of those vetoes.

The Supreme Court ruled 85 congressional acts or parts of acts unconstitutional.

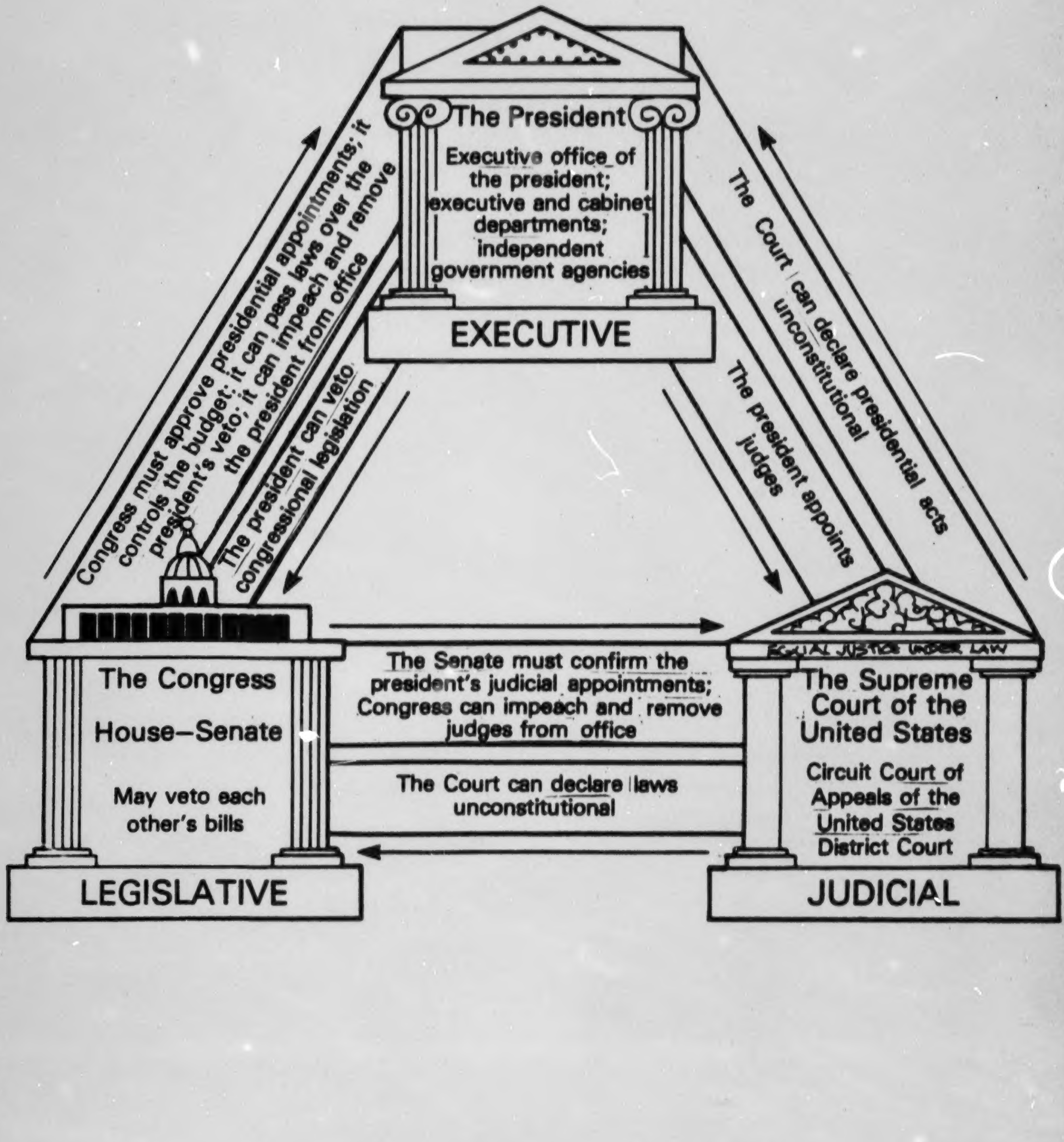
The Senate refused to confirm 27 nominees to the Supreme Court (out of a total of 138 nominees).

Congress impeached 9 federal judges; of these, 4 were convicted. The Senate rejected 8 Cabinet nominations.

Source: Senate Library, Presidential Vetoes (New York: Greenwood Press, 1968); Congressional Quarterly; and Current American Government (Washington, D.C.: Congressional Quarterly, Spring 1973), p. 106.

DIAGRAM 1

Separation of Powers and Checks and Balances


The President
Executive office of the president; executive and cabinet departments; independent government agencies
EXECUTIVE
Congress must approve presidential appointments; it controls the budget; it can pass laws over the president's veto; it can impeach and remove the president from office
The president can veto congressional legislation
The Court can declare presidential acts unconstitutional
The president appoints judges
The Congress
House–Senate
May veto each other's bills
LEGISLATIVE
The Senate must confirm the president's judicial appointments; Congress can impeach and remove judges from office
The Court can declare laws unconstitutional
EQUAL JUSTICE UNDER LAW
The Supreme Court of the United States
Circuit Court of Appeals of the United States
District Court
JUDICIAL

LESSON PLAN AND NOTES FOR TEACHERS

III-5. Separation of Powers and Checks and Balances

Preview of Main Points

This lesson introduces students to several basic ideas about separation of powers and checks and balances. The lesson explains how the Constitution separates the three branches of government, the meaning of checks and balances and how these two principles combine to form a government of separate institutions, which also share powers.

Connection to Textbooks

This lesson can be used to deepen student understanding of separation of powers and checks and balances. The lesson contains some ideas about the two principles not found in textbooks. It can be used to introduce discussions about the two principles or for practice and reinforcement after students have studied the principles in their textbook.

Objectives

Students are expected to:

1. know the basic definition and distinguishing characteristics of separation of powers and checks and balances;
2. use information in tables to identify main characteristics of separation of powers and checks and balances;
3. interpret relevant quotations regarding separation of powers;
4. distinguish examples and non-examples of checks and balances;
5. identify portions of the U.S. Constitution that establish separation of powers and checks and balances.

Suggestions for Teaching the Lesson

This is a concept learning lesson. It is designed to systematically present the concepts of separation of powers and checks and balances to students through the use of definitions and examples. Students are asked to apply definitions to the organization and interpretation of information.

Students complete a set of activities or "application exercises" at the end of sections of the lesson and again at the end of the lesson.

Opening the Lesson

- Tell the students the main point and purposes of the lesson, so that they know it focuses on two major principles of the Constitution -- separation of powers and checks and balances.
- Discuss the statement by James Madison on the first page of the lesson. Ask students what Madison meant by obliging the government to control itself. Ask them what Madison's statement has to do with separation of powers and checks and balances.

Developing the Lesson

- Have students work through each of the main sections of the lesson. Each section is about major features of separation of powers and checks and balances.
- Require students to complete the application exercise that follows each section of the lesson.
- You could discuss student responses to each of the application exercises before having them move on to the next section of the lesson. Or you may wish to have them complete all the exercises before discussing them together.

Concluding the Lesson

- Have students complete the application exercise at the end of the lesson -- "Reviewing and Applying Knowledge About Separation of Powers and Checks and Balances."
- Conduct a class discussion of this application exercise.

III-6. THE VETO POWER: A WEAPON IN THE SYSTEM OF CHECKS AND BALANCES

The Constitution says that every bill approved by a majority of the House of Representatives and the Senate must be sent to the President for action before it can become law. If the President signs the bill it becomes a law at once. If the President holds the bill for ten days, it becomes law without his signature.

However, Congress and the President often disagree over policy. When Congress passes a bill the President does not like, the President may veto, or not approve, the bill. The veto power is described in Article 1, Section 7, of the Constitution.

The President may veto a bill in two ways. First, the President may send the bill back to the house of its origin unsigned. The President writes "veto" (I forbid) across the front of the bill. A "veto message" may be written to explain this action. A second way of not approving a bill is called a "pocket veto." Presidents may use a "pocket veto" by not acting on bills officially submitted to them within ten days (not counting Sundays) before Congress adjourns. Presidents use "pocket vetoes" -- when the situation permits -- to avoid going on record as opposing a particular bill.

Congress may overrule, or throw over, the President's veto by a 2/3 vote of both the House of Representatives and the Senate. One way to avoid this outcome is to use a "pocket veto" whenever the situation permits it.

The table on the next page shows how many times each President has used the veto power since 1789. The table also shows how many vetoes Congress has overridden. Use the information in this table to answer the questions on the Student Worksheet at the end of the lesson.

TABLE 1

Presidential Vetoes: 1789 -1981

	President	Regular Vetoes	Vetoes Over-ridden	Pocket Vetoes	Total Vetoes
1789-1797	George Washington	2	0	0	2
1797-1801	John Adams	0	0	0	0
1801-1809	Thomas Jefferson	0	0	0	0
1809-1817	James Madison	5	0	2	7
1817-1825	James Monroe	1	0	0	1
1825-1829	James Q. Adams	0	0	0	0
1829-1837	Andrew Jackson	5	0	7	12
1837-1841	Martin Van Buren	0	0	1	1
1841-1841	W. H. Harrison	0	0	0	0
1841-1845	John Tyler	6	1	4	10
1845-1849	James K. Polk	2	0	1	3
1849-1850	Zachary Taylor	0	0	0	0
1850-1853	Millard Fillmore	0	0	0	0
1853-1857	Franklin Pierce	9	5	0	9
1857-1861	James Buchanan	4	0	3	7
1861-1865	Abraham Lincoln	2	0	5	7
1865-1869	Andrew Johnson	21	15	8	29
1869-1877	Ulysses S. Grant	45	4	48	93
1877-1881	Rutherford B. Hayes	12	1	1	13
1881-1881	James A. Garfield	0	0	0	0
1881-1885	Chester A. Arthur	4	1	8	12
1885-1889	Grover Cleveland	304	2	110	414
1889-1893	Benjamin Harrison	19	1	25	44
1893-1897	Grover Cleveland	42	5	128	170
1897-1901	William McKinley	6	0	36	42
1901-1909	Theodore Roosevelt	42	1	40	82
1909-1913	William H. Taft	30	1	9	39
1913-1921	Woodrow Wilson	33	6	11	44
1921-1923	Warren G. Harding	5	0	1	6
1923-1929	Calvin Coolidge	20	4	30	50
1929-1933	Herbert Hoover	21	3	16	37
1933-1945	Franklin D. Roosevelt	372	9	263	635
1945-1953	Harry S. Truman	180	12	70	250
1953-1961	Dwight D. Eisenhower	73	2	108	181
1961-1963	John F. Kennedy	12	0	9	21
1963-1969	Lyndon B. Johnson	16	0	14	30
1969-1974	Richard M. Nixon*	26	7	17	43
1974-1977	Gerald R. Ford	48	12	18	66
1977-1981	Jimmy Carter	13	2	18	31
	Total	1,380	94	1,011	2,391

* Two "pocket vetoes," overruled in the courts, are counted here as regular votoes.

SOURCE: Presidential Vetoes, 1789-1976, compiled by the Senate Library (Washington, D.C.: Government Printing Office, 1978), p. ix; Carter figures are taken from Weekly Compilation of Presidential Documents.

STUDENT WORKSHEET

The Veto Power: A Weapon in the System of Checks and Balances

Directions: Use the information in Table 2, page 219, to answer the following questions.

1. How many times since 1789 have Presidents used regular vetoes? ______
2. How many "pocket vetoes" have been used by Presidents since 1789? ______
3. Who caused the greatest total number of vetoes?
______
4. Who was the first President to use the veto more than 10 times? ______
5. Who were the Presidents who did not use the veto power at all? ______
______
6. List the five Presidents who used the veto (regular and pocket) most often.

a. ______ d. ______
b. ______ e. ______
c. ______

7. a. Which President had the greatest number of vetoes overridden by Congress? ______

   b. What does having a great number of vetoes overridden by Congress suggest about the political situation at that time? ______
   ______
   ______
   ______
   ______

8. Has the use of the veto by Presidents been increasing or decreasing since President Roosevelt's administration?
______ Explain. ______
______
9. What conclusions can be drawn from the table about how effective the veto is as a tool for the President to influence Congress? ______
______

LESSON PLAN AND NOTES FOR TEACHERS

III-6. The Veto Power: A Weapon in the System of Checks and Balances

Preview of the Main Points

This lesson contains a short lecture on the role of the veto in the system of checks and balances, and a table on presidential uses of the veto throughout history. By reading and interpreting the table students will learn that the use of the veto has been increasing since the Civil War and that Congress rarely overturns a veto.

Connection to Textbooks

This lesson complements discussions of checks and balances. It would also supplement discussions of the presidential powers or the steps followed when Congress passes a law.

Objectives

Students are expected to:

1. describe the key types of information presented in the table on presidential vetoes;
2. use information in the table on presidential vetoes to draw conclusions about the effectiveness of the veto as a tool of the Presidency;
3. explain why the veto is an illustration of checks and balances.

Suggestions for Teaching the Lesson

Opening the Lesson

- You may wish to introduce the table on presidential vetoes with a lecture explaining the origin of the veto and its role in the system of checks and balances. "Lecture Notes" are provided for this purpose.

  Note: As an alternative you might distribute copies of the "Lecture Notes" to students as a reading assignment prior to study of the table.

Developing the Lesson

- Have students read the brief discussion about the veto power on the first page of the lesson. This serves as an introduction to the table.

- Tell students to examine the table, Presidential Vetoes: 1789-1981.

- Understanding the Table. Here are several points you may wish to call to students' attention as they review the table.

  (1) Andrew Johnson's Vetoes. President Andrew Johnson's 29 vetoes were more than double the number used by any of his predecessors. Why?

  Johnson was President at the conclusion of the Civil War. He sought to carry on Lincoln's policy of moderation toward the newly defeated and devastated South. He used the veto frequently to try to head off harsh measures against the South being proposed by radical Republicans in Congress who disagreed with Lincoln's policy of moderation.

  (2) The table presents data for both public bills and private bills passed by Congress. Presidents can and do veto both types of bills. (Private bills are laws that deal with an individual or one company. These bills aim to solve a problem for one person or company. If passed they apply only to that person or company. Public bills deal with matters of general concern and may become public laws.)

  Grover Cleveland's Vetoes. Much of the legislation vetoed by Cleveland (304) was private legislation, in particular individual pension and relief bills.

  Decline in Vetoes Since Eisenhower. The number of vetoes has declined drastically since President Eisenhower's administration. Why? A major reason is that in recent years Congress has passed far fewer private bills because such matters have been increasingly handled through the federal bureaucracy rather than by Congress. Thus, since Eisenhower Presidents have been vetoing less private legislation because they have been receiving less from Congress. In recent years almost all legislation being vetoed by the President has been public rather than private legislation.

(3) President Ford's Vetoes. Ford was a Republican facing a Congress controlled by Democrats. Presidents facing hostile majorities in Congress are more likely to resort to using the veto on major bills than Presidents who find a more friendly group of lawmakers on Capitol Hill.

Concluding the Lesson

- Have students answer the questions on the "Veto Power Worksheet."
- Conduct a class discussion about responses to the questions on the Student Worksheet.

LECTURE NOTES

The Veto Power and Checks and Balances

1. Origins of the Veto Power

The Constitution requires every bill that passes the House and Senate to be sent to the President for action before it can become law.

The President has the power to veto a bill. The President may veto, or not approve, a bill in two ways:

(1) by sending the bill back to the house of its origin unsigned (the President writes "veto" (I forbid) across the front of the bill) or

(2) by using a "pocket veto" -- not acting on bills submitted within ten days before Congress adjourns.

Congress may override the President's veto by a two thirds vote in both the Senate and House. This is very hard to do since only one-third plus one of the members in either house are needed to block an attempt to override a veto.

The Founding Fathers described the veto in Article 1, Section 7 of the Constitution. During the campaign for ratification some Anti-Federalists argued strongly against the veto power. They said it was a mistake for the executive branch to have any control over the work of the legislative branch.

Those favoring adoption of the Constitution, the Federalists, supported the veto. Both Alexander Hamilton and James Madison offered two arguments in favor of the veto.

First, in the Federalist Papers (#73) Hamilton argued that the veto was needed to protect the Presidency against attempts by Congress to interfere with executive powers.

Second, Hamilton argued the veto would allow the President to block what he called "improper laws." Madison agreed. During the Constitutional Convention, he said the veto would prevent Congress "from passing laws unwise in their principle, or incorrect in their form" and from violating the rights of citizens.

Notice that the Federalist arguments all involve the idea of checks and balances. This is the principle that each branch of the national government should have some weapons to check or balance the actions of the other branches.

2. Contribution to Checks and Balances

The veto is an important part of the system of checks and balances.

A. How Presidents Use the Veto

This veto gives the President a role or share in the legislative process in two ways.

First, the President may block or force Congress to modify legislation after the fact. When the President vetoes a bill, and Congress does not have the votes to override the veto, it must modify the bill if it is to become law.

Second, the threat of a veto can be as effective as a veto itself. Presidents may threaten to veto a bill unless Congress makes changes they want in the legislation. Here are two examples:

(1) President Nixon once informed Congress that he was displeased with the Senate version of a bill called the Family Assistance Plan. He made it clear he would veto the bill unless Congress passed the House version of the plan. As it turned out no Family Assistance Plan passed the Senate because of the President's opposition.

(2) In 1975 both Houses of Congress passed a consumer protection bill. However, the bill never went the final step to a conference committee because President Ford threatened to veto it.

B. How Congress Deals With the Veto

In our system of checks and balances, Congress is not powerless against the veto. Congress may override a veto by a two-thirds vote of both Houses. In addition, Congress has developed two strategies to counteract the veto.

First, Congress often presents the President with bills that cover several different topics. This prevents the President from considering (and perhaps vetoing) the bill as a single neat package.

Second, the Senate may attach irrelevant amendments (called "riders") to appropriations bills. These bills supply money for basic federal government activities.

In 1959, for example, a rider calling for extending the Civil Rights Commission was attached to a foreign aid bill. During the 1970's, many riders aimed at outlawing school busing or the use of federal funds for abortion were attached to appropriations bills.

Since Presidents must veto an entire bill, not just the parts they do not like, the strategy may cause a dilemma. Either Presidents must veto the entire bill, including the parts they support, or they must veto none of it and let the rider along with the rest of the bill become law.

III-7. WHAT DOES THE CONSTITUTION SAY ABOUT SEPARATION OF POWERS AND CHECKS AND BALANCES?

Read each of the following statements. Decide whether or not each statement describes a situation that agrees with the words of the U.S. Constitution. If so, answer YES. If not, answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment to the Constitution, which supports your answer. Write this information on the line below each item.

CLUE: Answers to these items can be found in Articles I, II and III.

1. The Chief Justice of the Supreme Court died. Thus, the Senate chose a replacement.

   YES NO

2. The President passed a new federal law, which was needed, because Congress was not in session.

   YES NO

3. The Omnibus Crime Bill passed both Houses of Congress. The Bill has been on the President's desk for 15 days while Congress has been in session. Then the President vetoed the bill.

   YES NO

4. The U.S. Supreme Court announced that it had established, by a unanimous vote of the Justices, a new federal appeals court to help with the large load of cases.

   YES NO

5. Actions of the President, which violate the law, may lead to impeachment by the House of Representatives.

YES NO

---

6. Congress passed a law, which the President signed, setting 70 as a mandatory retirement age for Justices of the Supreme Court.

YES NO

---

7. It is the duty of the President to declare the punishment for citizens convicted of treason.

YES NO

---

8. Congress has the power to limit the President's use of federal money.

YES NO

---

9. The President signed a treaty with the head of an African nation. After approval by 2/3 of the Supreme Court, it went into effect.

YES NO

---

10. Congress may pass a law over the President's veto by a 2/3 vote of both Houses.

YES NO

LESSON PLAN AND NOTES FOR TEACHERS

III-7. What Does the Constitution Say About Separation of Powers and Checks and Balances?

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of two related constitutional principles: (1) separation of powers and (2) checks and balances. In addition, students should become more familiar with certain parts of the Constitution that pertain to separation of powers and checks and balances.

Connection to Textbooks

This lesson can be used to reinforce American government textbook treatment of separation of powers and checks and balances. The lesson can be used to supplement American history textbook discussions of main principles of the Constitution, which usually follow treatments of the Constitutional Convention.

Objectives

Students are expected to:

1. demonstrate knowledge of the constitutional principles of separation of powers and checks and balances by responding correctly with a "YES" or "NO" answer to each item in this lesson;
2. support their responses to each item by listing the correct reference in the U.S. Constitution (Article and Section);
3. increase knowledge of certain parts of the Constitution that pertain directly to the principles of separation of powers and checks and balances;
4. practice skills in locating and comprehending information in the U.S. Constitution;
5. increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions For Teaching The Lesson

Opening The Lesson

- Inform students of the main points of the lesson.

- Be certain that students understand the directions for the lesson.

Developing The Lesson

- Have students work indivudally or in small groups to complete the items in this exercise.

- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding The Lesson

- Ask students to explain what each item in the exercise has to do with either separation of powers or checks and balances. By doing this, students can demonstrate comprehension of the ideas of separation of powers and checks and balances.

- You may wish to have students examine and discuss in more detail issues and questions associated with the items in this exercise.

Answers

1. NO, Article II, Section 2, Clause 2.
2. NO, Article I, Section 1.
3. NO, Article I, Section 7, Clause 2.
4. NO, Article III, Section 1.
5. YES, Article II, Section 4 (Also: Article I, Section 2, Clause 5).
6. NO, Article III, Section 1.
7. NO, Article III, Section 3.
8. YES, Article I, Section 7, Clause 1.
9. NO, Article II, Section 2, Clause 2.
10. YES, Article I, Section 7, Clause 2.

III-8. KEY TERMS FOR UNDERSTANDING THE SEPARATION OF POWERS AND CHECKS AND BALANCES

Look at the sentences in the following list. You will find the words needed to complete each sentence in the "word-find" puzzle on page 232. Read each of the sentences below and decide what word or phrase belongs in each of the blanks. Then find the word or phrase in the puzzle and circle it. Write each correct word or phrase in the appropriate blank space within the list of words. Words in the puzzle are displayed horizontally or vertically. None of the words are printed at an angle.

1. Within the national government, the powers necessary to rule are ________________________ among the three branches.
2. Each branch of the government may ________________________ the powers of the other two branches.
3. The President's ________________________ power allows him to control who will serve as judges and who will occupy the main positions in the executive departments.
4. The President's appointments must have the ________________ of a majority of the Senate.
5. Control over the ________________________ of money to operate the government gives Congress an important weapon to limit the activities of the President.
6. The "Power of the ________________________" is another term to describe Congress' power over the appropriating and spending of money by the government.
7. Congress' lawmaking power may be checked by the President's use of the ________________________ power.
8. Both the President's and Congress' actions may be brought in check by the Court's power of ________________________.
9. The ________________________ power allows Congress to remove from office an unfit President or judge.

"Word-Find" Puzzle About Separation of Powers and Checks and Balances

Z	I	K	I	Q	L	H	W	Y	J	K	M	U	S	G	W	R	E	T	I
T	W	A	R	U	A	D	I	S	T	R	I	B	U	T	I	O	N	E	I
I	C	C	B	A	B	K	U	J	K	W	H	C	V	N	U	S	C	C	D
A	U	C	Y	Y	Q	W	A	P	H	L	O	K	G	S	K	I	O	Y	C
O	K	H	B	I	L	J	P	X	U	Y	H	K	C	Z	Q	N	V	F	V
M	I	E	D	E	Y	A	P	G	F	K	R	E	W	A	B	V	E	W	K
W	I	C	Q	P	V	P	O	V	D	G	A	Q	D	G	E	G	T	J	H
E	R	K	Q	L	A	P	I	G	A	Q	S	V	O	A	M	R	O	O	A
X	U	A	B	B	G	R	N	B	D	X	L	J	P	S	O	M	G	S	C
O	R	N	Z	C	P	O	T	O	P	P	T	H	X	H	D	P	I	S	Q
E	B	D	H	S	V	P	M	I	C	V	R	M	I	E	U	U	M	K	A
T	F	B	G	R	E	R	E	C	O	N	S	E	N	T	U	R	P	P	I
S	R	A	J	C	C	I	N	R	D	E	E	V	A	R	W	S	E	T	W
B	G	L	V	V	G	A	T	A	W	G	P	J	Q	Y	S	E	A	N	U
J	O	A	Z	Q	K	T	W	G	O	Y	A	T	T	Y	J	A	C	E	X
W	K	N	J	U	D	I	C	I	A	L	R	E	V	I	E	W	H	M	Q
R	N	C	A	D	B	O	R	R	V	B	A	K	F	J	V	H	M	X	F
V	E	E	C	E	C	N	R	P	B	L	T	Y	A	X	T	X	E	Z	L
V	A	Z	U	G	S	H	H	X	S	G	E	Z	G	E	G	T	N	K	Y
W	X	U	H	L	F	O	Y	P	C	X	D	P	F	C	Q	Y	T	K	Y

There are 9 words here - can you find them?

1.

2.

3.

4.

5.

6.

7.

8.

9.

LESSON PLAN AND NOTES FOR TEACHERS

III-8. Key Terms for Understanding Separation of Powers and Checks and Balances

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them to understand the Constitution. The key words in this lesson pertain to the constitutional principles of separation of powers and checks and balances. This lesson provides practice in the use of words associated with separation of powers and checks and balances.

Connection to Textbooks

The words in this lesson are related to discussions of separation of powers and checks and balances, which are found in American government and history textbooks. Practice in using these words may help students to read certain parts of their textbook more effectively.

Objectives

Students are expected to:

1. demonstrate comprehension of key words about separation of powers and checks and balances by supplying the missing words in the list of statements and completing the word-find puzzle on the second page of the lesson;
2. discuss the key words so as to demonstrate knowledge of the principles of separation of powers and checks and balances.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of this lesson is to provide practice in using key words about two important constitutional principles -- separation of powers and checks and balances.
- Remind students of the value of learning key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing The Lesson

- Distribute the worksheets with the list of words and the word-find puzzle.
- Have students work individually or in small groups to complete the worksheets.
- Tell students to write the correct word or phrase on each blank in the list of words on page 231 and to complete the word-find puzzle on page 232.
- Suggest to students that they might want to use the glossary in their textbooks, or other pertinent reference materials, to help them complete the lesson.

Concluding The Lesson

- Check answers by asking students to report their responses to the word-find puzzle.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

Answers to Word-Find Puzzle

SEPARATION OF POWERS AND CHECKS AND BALANCES

```
. . . . . . . . . . . . . . . . . . . .
. . . . . . . . . . . . . . . . . . . .
. . . . . . . . . . . . . . . . . . . .
. . C . . . . A . . . . . . . . . . . .
. . H . . . . P . . . . . . . . . V . .
. . E . . . A P . . . . . . . . . E . .
. . C . . . P O . . . . . . . . . T . .
. . K . . . P I . . . . . . . . . O . .
. . A . . . R N . . . . . . . . . . . .
. . N . . . O T . . . . . . . . P I . .
. . D . . . P M . . . . . . . . U M . .
. . B . . . R E C O N S E N T . R P . .
. . A . . . I N . . . E . . . . S E . .
. . L . . . A T . . . P . . . . E A . .
. . A . . . T . . . . A . . . . . C . .
. . N J U D I C I A L R E V I E W H . .
. . C . . . O . . . . A . . . . . M . .
. . E . . . N . . . . T . . . . . E . .
. . . . . . . . . . . E . . . . . N . .
. . . . . . . . . . . D . . . . . T . .
```

III-9. THE PRINCIPLE OF JUDICIAL REVIEW

Imagine these headlines on the front page of your daily newspaper:

> THE PRESIDENT PROCLAIMS ONLY CHRISTIANS CAN HOLD JOBS IN THE FEDERAL GOVERNMENT.
>
> TEXAS LEGISLATURE PASSES LAW EXEMPTING CITIZENS OF THE STATE FROM PAYING FEDERAL INCOME TAXES

The actions described in the imaginary headlines violate the U.S. Constitution. If challenged in a federal or state court, such actions could be declared unconstitutional through the process of judicial review.

Judicial review is the power of the courts to declare acts of the legislative and executive branches of government null and void if they violate provisions of the Constitution. All courts, federal and state, may exercise judicial review. The U.S. Supreme Court, however, has the final say about the constitutionality of actions and laws. It is the highest court in the land.

Judicial review is based on these ideas: the Constituion is the supreme law; acts contrary to the Constitution are null and void; the courts are responsible for determining if acts violate the Constitution. Judicial review puts judges in the position of being the guardians or official interpreters of the meaning of the Constitution.

Judicial review is one of the most important principles of American government. In this lesson you will study:

- the origins of judicial review,
- three ways judicial review is applied, and
- how the courts limit their use of judicial review.

The Origins of Judicial Review

Judicial review is not specifically mentioned in the Constitution. Where did this practice come from?

Colonial Roots. Before the revolution in 1776 the English Privy Council [advisers to the king] in London regularly reviewed acts of the colonies to make sure they complied with English law. After the Declaration of Independence in 1776 each of the colonies formed state governments with their own state constitutions. Between

1778 and the Constitutional Convention in 1787 it became the practice of the courts in several states to overturn laws which they found violated their constitution. Thus, judicial review was well known in the colonies before the Constitution was written.

When the Founders wrote the Constitution, there was little doubt they intended the federal courts to have authority to declare state laws unconstitutional. It was less clear, however, that they intended the Supreme Court to have the same power over acts of Congress or the President.

A Constitutional Debate Starts. During the debate over ratification of the Constitution, Alexander Hamilton argued that the Supreme Court's power of judicial review was clearly implied by the Constitution, if not stated explicitly. In The Federalist (#78), Hamilton wrote:

> The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as, a fundamental law. It therefore belongs to them to ascertain its meaning as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be irreconcilable variance between the two, that which has the superior obligation and validity ought, of course to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

A young lawer from Virginia, helping to convince his state to ratify the Constitution, summarized the need for judicial review. That lawyer, John Marshall, asked:

> To what quarter will you look for protection from an infringement on the Constitution if you will not give the power to the judiciary (the Supreme Court): There is no other body that can afford (offer) such protection.

Other political leaders of the time were not so enthusiastic. As the new government got started, Thomas Jefferson emerged as a leader of those who opposed the Court's use of judicial review over the executive and legislative branches of the national government.

Jefferson wanted each of the three branches of government to decide for itself about the meaning of the Constitution. Thus, Congress would decide for itself whether or not its actions were constitutional. The President would do the same.

Here is what Jefferson had to say about judicial review:

> My construction of the Constitution is . . . that each department is truly independent of the others, and has an equal right to decide for itself what is the meaning of the Constitution in the cases submitted to its action most especially where it is to act ultimately and without appeal. . . . Each of the three departments has equally the right to decide for itself what is its duty under the Constitution, without any regard to what the others may have decided for themselves under a similar question.

When Jefferson was elected President in 1800 it was still not settled whether the Supreme Court would exercise judicial review over acts of Congress or the President. The Court first asserted the power of judicial review of congressional actions in a case that grew out of the bitterly contested election which brought Jefferson to office.

Marbury v. Madison (1803). William Marbury was one of 42 men awaiting commissions from President Adams' administration appointing them justices of the peace for the District of Columbia. The President, a Federalist, rushed the appointments of these loyal federalists through the Senate just before his term of office ended. He hoped to leave his successor, the Republican Jefferson, with a court system packed with opponents.

Adams' plan hit a snag when his Secretary of State failed to deliver all the commissions before Jefferson was inaugurated. Discovering Adams' plan, President Jefferson instructed his new Secretary of State, James Madison, not to deliver the remaining commissions, one of which was Marbury's.

In an effort to force Madison to release his commission, William Marbury looked through the Judiciary Act of 1789. He found that the Supreme Court had been given the power to issue writs of mandamus, orders that would force public officials to perform their official duties. Armed with this law, Marbury went to the Supreme Court and asked that a writ be issued to Madison commanding him to deliver the commission.

Madison refused to obey the writ of mandamus. Thus the conflict came before the Supreme Court.

The Court held that Marbury had a right to the commission he demanded, according to the Judiciary Act of 1789. However, the Court also decided that it had no right, under the Constitution, to issue a writ of mandamus forcing Madison to deliver the commission to Marbury.

Chief Justice John Marshall explained the decision. In so doing, he established the principle of judicial review of congressional actions.

Marshall examined Article III, Section 2 of the Constitution to find what sorts of cases the Supreme Court had original jurisdiction over -- cases for which court action would begin with the Supreme Court. Issuing writs of mandamus was not mentioned as being within the Court's original jurisdiction. Thus, part of the Judiciary Act was in conflict with the Constitution. Applying the principle of judicial review, Marshall wrote:

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the Constitution, is void . . . .

The Supreme Court declared one part of the Judiciary Act of 1789 to be unconstitutional. Thus, William Marbury was left without the commission appointing him to be a justice of the peace. Of far greater significance, the Supreme Court had asserted the power of judicial review, which became a main principle of constitutional law in the United States.

Later on, when federal judges held other legislative actions unconstitutional, they based their right to do so on the arguments of John Marshall in *Marbury v. Madison*. Thus, Marshall established a precedent that has become part of constitutional government in the United States.

---

1. Which of the following are examples of judicial review? Mark an "X" in the spaces next to each correct item. Be prepared to explain your answers.

____ a. The Supreme Court rules that a state law is void because it violates free speech as protected in the First Amendment.

____ b. The President refuses to sign a bill passed by Congress because he claims it is unconstitutional.

____ c. To avoid a hostile Senate, the President fills several ambassadorships without seeking the Senate's approval. Citing Article III, Section 2, the Court declares the appointments invalid.

2. Which individual was most influential in establishing the principle of judicial review -- Thomas Jefferson, John Marshall, George Washington? Explain your choice.

3. Describe in a sentence the significance of the decision in Marbury v. Madison.

Three Applications of Judicial Review

Today the Supreme Court exercises its power of judicial review over (1) laws passed by Congress, (2) presidential actions, and (3) state legislation and court rulings. In this section you will examine these uses of judicial review.

Review of Congressional Acts. Since Marbury v. Madison (1803) the Supreme Court has declared all or part of more than 100 congressional acts unconstitutional (see Table 1, page 247). This use of judicial review gives the Court a role in shaping national public policy. For example, in the case of Califano v. Goldfarb (1977) the Court ruled that certain provisions of the Social Security Act were not unconstitutional because they did not apply equally to men and women. Through its ruling the Court was specifying what national government policy would be in administering that law.

Judicial review has also given people another way to participate in national policy making. In many instances a law passed by Congress, approved by the president and administered by the federal bureaucracy may be challenged by a single person. As one scholar put it, "Through a lawsuit, those who lack the clout to get a bill through the Congress or who cannot influence a federal agency may secure a hearing before the courts."

The Judiciary Committee of the U.S. Senate explained this contribution of judicial review to democracy as follows:

> A citizen . . . has the right to demand that Congress shall not pass any act in violation of [the Constitution], and, if Congress does pass such an act, he has the right to seek refuge in the courts and to expect the Supreme Court to strike down the act if it does in fact

> violate the Constitution. A written constituion would be valueless if it were otherwise.

Review of Presidential Actions. Just as it invalidates certain laws passed by Congress, the Supreme Court uses the power of judicial review to overturn presidential actions. In the course of their duty to enforce the law, Presidents issue executive orders that have the force of law. Such presidential actions can be challenged on the grounds that they conflict with existing laws, or that they conflict with the Constitution.

During and after the Civil War, for example, the Supreme Court decided that President Lincoln exceeded his executive powers in denying a trial by jury in a civil court to persons accused of treason (Ex parte Merryman, 1861 and Ex parte Milligan, 1866).

President Lincoln ignored the Court's decision in Ex parte Merryman (1861). He justified his actions on the grounds that the nation was in danger of destruction. This example shows the limitation of the Court's use of the power of judicial review. It cannot force the President to comply with its rulings. The Court only has the power of persuasion, which is based on the respect that citizens have for the rule of law. Usually, this is sufficient to pressure government officials to follow the Court's rulings. During the crisis of Civil War, however, national attention was diverted from issues about the rights of persons accused of treason to the cause of national salvation. After the war, however, the constitutional rights of accused persons were affirmed in the case of Ex parte Milligan.

Another outstanding example of the Court's use of judicial review to restrain the President came in 1952. The Court held that President Truman acted unconstitutionally when he ordered federal troops to seize steel mills that were closed by strikes during the Korean War (Youngstown Sheet & Tube v. Sawyer, 1952). The federal government complied with the decision and turned the steel mills back to private control.

Review of State Actions. The Supreme Court uses its powers of judicial review over state actions in several ways. State and local laws or ordinances are overturned and made void if they conflict with federal laws or they violate the Constitution. Similarly, state court rulings can be struck down if they conflict with the Constitution.

The first time a state law was held unconstitutional was in 1796 (Ware v. Hylton). The Supreme Court ruled that a Virginia law was not valid because it was in conflict with a federal treaty (The 1783 Treaty of Paris between the United

States and Britain). In Fletcher v. Peck (1810) the Court decided that a law passed by Georgia in 1795 was void because it "impaired the obligation of contracts," something forbidden to states in Article I, Section 10 of the Constitution. Since that time, state laws dealing with a wide range of issues have been invalidated by the Court.

In McCulloch v. Maryland (1819), Maryland's law that taxed a federal agency (the national bank) was declared unconstitutional, since the federal law that established the bank was superior to a state law that could hamper its operation.

In a more recent and controversial decision, the Court struck down laws in two states that made performing an abortion a crime. In Roe v. Wade (1973) and Doe v. Bolton (1973), the majority of Justices argued that the right to privacy, springing from the 14th Amendment, extends to a woman's decision to bear a child.

Table 2 (page 247) shows that the Court has been more willing to use its powers of judicial review over state laws than national laws. This happens, in part, because there are 50 different states, nearly 3,000 counties and more than 35,000 cities passing laws and ordinances that may conflict with the Constitution.

In addition, judicial review of state and local acts has been a major means to insure supremacy of the national government over the states. Without such a mechanism it would be nearly impossible for the national government to enforce the Constitution as supreme law of the land and thereby maintain national unity. Justice Robert H. Jackson put it this way:

> It is . . . part of our constitutional doctrine that conflicts between state legislation and the federal Constitution are to be resolved by the Supreme Court, and had it not been, it is difficult to see how the Union could have survived.

---

1. Which of the following are examples of judicial review? Mark an "X" in the spaces next to each correct item. Be prepared to explain your answer.

____ a. The Court overturns a Minnesota law raising the voting age to 21 as a violation of the 26th Amendment.

____ b. The House of Representatives reviews the opinions of a Supreme Court justice and decides to impeach him.

____ c. The President's order for FBI agents to round up critics of his administration is declared unconstitutional by the Supreme Court.

____ d. The Supreme Court settles a dispute between Colorado and Arizona over water rights to the Colorado river.

____ e. The Supreme Court rules that sections of the Occupational Health and Safety Act authorizing inspection of workplaces in industry without a search warrant violate the 4th Amendment.

2. One expert has said that the use of judicial review is "like a boxer's big knockout punch." Would you agree? Explain.

Limitations on Judicial Review

The courts play a key role in interpreting the meaning of the Constitution through judicial review. Still, the courts do not use judicial review whenever they wish. Nor can groups or individuals simply file a lawsuit anytime they disagree with a government action.

The Supreme Court has imposed several important restraints on the exercise of judicial review. Four limitations on judicial review are: (1) the live controversy rule, (2) standing to sue, (3) the doctrine of political questions and (4) rules for Constitutional interpretation.

Live Controversy Rule. The courts will not decide hypothetical questions about the Constitution. The Courts will only hear a case if it involves a real conflict between real adversaries. For example, Congress could not simply ask the Supreme Court for its advice about whether a bill would be constitutional. The Court would only decide such an issue if the bill were passed into law and then challenged by someone in a real controversy.

Standing to Sue. Related to the need for real controversy is the requirement of *standing* to sue. Standing means groups or individuals seeking judicial review must show that their legal rights are being adversely affected by a situation in a personal way that sets them apart from the general interest of the community. That is, they must show some injury from the governmental action they want to challenge in court.

Thus, someone cannot sue the President or Congress simply because they do not like a policy or decision. Nor could they use the courts solely to promote their particular interpretation of the Constitution.

Political Questions. Even if a person or group has standing to sue, the Supreme Court may not hear a case if the Court concludes the case involves a political question. Political questions are matters the Supreme Court does not want to decide for a variety of reasons.

Political questions may include decisions clearly in the jurisdiction of Congress or the President, or questions that cannot be resolved on legal/constitutional grounds, or issues that create intense political controversy, or decisions it would be difficult to enforce. For example, the Court has said it is for the President not the Court to determine whether a certain foreign government is to be recognized by the United States.

Rules For Interpretation. Finally, over the years the Court has developed rules to guide federal judges when they do interpret the meaning of the Constitution. These "rules" are not hard and fast but they are generally followed. They are:

(1) The Courts should not rule on a constitutional issue unless absolutely necessary to settle a case.

(2) When there are two reasonable interpretations of a law, one constitutional and the other not, choose the interpretation that upholds the law as constitutional.

(3) When making a constitutional ruling, limit it as narrowly as possible and strike down only the unconstitutional portion of a law. Never anticipate or decide issues not immediately before the court.

In Conclusion

Nearly 200 years after the writing of the Constitution, Hamilton and Marshall's view of judicial review has prevailed. Thus, the Supreme Court has used its powers of judicial review to make judgments about laws passed by Congress, presidential actions and state legislation.

During the last two centuries, the Constitution has remained a vigorous frame of government, as alive as it was when its ink was barely dry. It owes much of its vitality to the constitutional principle of judicial review.

Reviewing and Applying Knowledge About Judicial Review

1. Indicate whether each statement below is true or false If you mark a statement false, rewrite or correct it so that it is true.

   ____ a. Only the Supreme Court may exercise judicial review.

   ____ b. Judicial review is defined in Article III of the Constitution.

   ____ c. Judicial review was used by some state courts prior to 1787.

   ____ d. Thomas Jefferson strongly supported the practice of judicial review.

   ____ e. The Supreme Court struck down for the first time an act of Congress as unconstitutional in *Marbury v. Madison*.

   ____ f. Judicial review greatly limits the Supreme Court's role in public policy making.

   ____ g. The live controversy rule means the courts will not review cases involving real conflicts between parties.

   ____ h. To have standing to sue, a group or individual must apply to the Court within a six month time limit.

   ____ g. The Supreme Court will not decide cases it concludes involve a political question.

2. Felix Frankfurter, an Associate Justice of the Supreme Court from 1939-1962, expressed some reservations about judicial review. He referred to the principle as "a deliverate check upon democracy through an organ of government not subject to popular control."

Do you think that Frankfurter was right to worry that Supreme Court Justices, who are not elected by voters, would undermine the will of the majority of citizens? ______________

3. Study the Tables 1 and 2 (page 247) and answer these questions:

   a. Which kind of law has the Court tended to overturn more frequently? ______________

   b. Were more laws held unconstitutional before or after 1860?

   c. Were more laws held unconstitutional in the 19th or 20th centuries? ______________

   d. What does the evidence in Tables 1 and 2 suggest about the growth of the Supreme Court's powers within the federal government? ______________

4. Justice Oliver Wendell Holmes served on the Supreme Court from 1902-1932. In 1934, he said:

> I do not think the United States would come to an end if we lost our power to declare an act of Congress void. I do think the Union would be imperiled if we could not make that declaration as to the laws of the several States. For one in my place sees how often local policy prevails with those who are not trained to national views.

   a. What is the main idea of Holmes' statement? ______________

   b. What does the evidence in Tables 1 and 2 suggest about why Holmes made this statement? ______________

   C. What do you think Holmes meant in his last sentence when he contrasted "local policy" with "national views?"

d. Do you agree with Holmes? ____________________

Why? ____________________

4. Examine the statement by Thomas Jefferson on page 237. What is the main idea of Jefferson's statement?

5. Examine the statement by Alexander Hamilton on page 236. What is the main idea of Hamilton's statement?

6. How might government under the Constitution be different today if Jefferson's view about judicial review had prevailed?

TABLE 1

Provisions of Federal Law Held Unconstitutional by Supreme Court, by Decade (Through End of 1977 Term)

Period	No.	Period	No.
1790-99	0	1890-99	5
1800-09	1	1900-09	9
1810-19	0	1910-19	5
1820-29	0	1920-29	15
1830-39	0	1930-39	13
1840-49	0	1940-49	2
1850-59	1	1950-59	4
1860-69	4	1960-69	18
1870-79	8	1970-79	16
1880-89	4	Total	105

SOURCE: Congressional Research Service. *The Constitution of of the United States of America: Analysis and Interpretation* (Washington: Government Printing Office, 1973 and 1978).

TABLE 2

Provisions of State Laws and Local Ordinances Held Unconstitutional by Supreme Court, by Decade (Through End of 1977 Term)

Period	No.	Period	No.
1790-99	0	1890-99	36
1800-09	1	1900-09	38
1810-19	7	1910-19	118
1820-29	8	1920-29	140
1830-39	3	1930-39	91
1840-49	9	1940-49	58
1850-59	7	1950-59	69
1860-69	23	1960-69	140
1870-79	37	1970-79	177
1880-89	45	Total	1007

SOURCE: Congressional Research Service, *The Constitution of the United States: Analysis and Interpretation* (Washington, D.C.: Government Printing Office, 1973 and 1978).

LESSON PLAN AND NOTES FOR TEACHERS

III-9. The Principle of Judicial Review

Preview of Main Points

This lesson defines judicial review--a basic principle of government under the Constitution. The lesson describes the meaning and origins of judicial review, three applications of judicial review and limitations on the practice imposed by the courts themselves. The lesson underscores the need to have a final interpreter of the Constitution.

Connection to Textbooks

This lesson can be used in connection with government textbook chapters on fundamental constitutional principles and on the Supreme Court. American history textbook chapters on the Federalist period and Jefferson's presidency would provide appropriate opportunities to use the lesson. One might use the lesson in conjunction with history textbook treatments of judicial nationalism under Chief Justice Marshall.

Objectives

Students are expected to:

1. identify examples of judicial review;
2. learn the colonial roots of judicial review;
3. know the significance of Marbury v. Madison for the development of judicial review;
4. know how judicial review of congressional actions increases the courts' role in policy making and increases opportunities for citizen influence of public policy;
5. understand the contribution of judicial review of state legislation to national unity;
6. draw inferences about key features of judicial review from relevant statements and tables.

Suggestions For Teaching The Lesson

This is a concept-learning lesson. It is designed according to a "rule-example-application" teaching strategy. A concept -- such as judicial review -- is presented initially through definitions (rules) and examples conforming to those rules.

Students then apply the definitions to organize and interpret information. Application exercises follow each main section of the lesson and its conclusion, giving students the chance to test their ability to use the ideas presented in the lesson.

Opening The Lesson

- Inform students of the main point and purposes of the lesson, to focus on the principle of judicial review.

- Have students read the lesson's introductory material. Students might discuss why the imaginary situations are unconstitutional.

  Note: The action described in the first headline violates Article VI which states, "no religious test shall ever be required as a qualification to any office or public trust under the United States."

  The action in the second headline also violates Article VI which establishes the supremeacy of national law and the 16th Amendment which established the federal income tax.

Developing The Lesson

- Have students work independently through each of the main sections of the lesson.

- Students should complete the application exercises at the end of each of the first two main sections of the lesson.

  You might want to discuss student responses to each of the application exercises before having them move to the next section of the lesson. Or you may wish to have them complete all three sets of exercises before discussing them together.

Concluding The Lesson

- Have students read the third and final section of the lesson -- "Limitations on Judicial Review." Require them to complete the application exercise at the end of the lesson, which pertains to the entire lesson.

- Conduct a discussion of the application exercise -- "Reviewing and Applying Knowledge About the Principle of Judicial Review." Students may need special assistance interpreting and drawing inferences from the tables. The fact that state laws are more often overturned than federal laws might indicate that local laws and lawmakers give less consideration to constitutional issues than members of Congress whose laws affect the whole nation (federal laws). Variation in the numbers of laws overturned over a period of time might suggest differences in the membership of the Court, or pressures it felt from the other branches.

- Ask students to compare the view of Hamilton and Jefferson about judicial review.
- Ask students to verbalize the presumed difficulties of having each branch of government decide what is constitutional, as Jefferson had advocated.

Suggested Reading

The case of Marbury v. Madison is discussed in detail in a fascinating and easy to read chapter in the following book.

Garraty, John A. (ed) Quarrels That Have Shaped The Constitution. (New York: Harper & Row, Publishers, 1964), pp. 1-14.

Suggested Films

THE UNITED STATES SUPREME COURT: GUARDIAN OF THE CONSTITUTION
The continuing evolution of the Supreme Court is traced through historical highlights and landmark cases and through the insights of several prominent authorities commenting on the jurist's viewpoint and the power of judicial review. Concept Films, 1973, 24 minutes.

MARBURY VS. MADISON
This film dramatizes the Supreme Court decision which established its responsibility to review the constitutionality of acts of Congress. From EQUAL JUSTICE UNDER LAW series, U.S. National Audiovisual Center, 1977, 36 minutes.

III-10. HOW SHOULD JUDGES USE THEIR POWER?

Federal judges today are making decisions in areas many people believe are none of their business. Other people support the active role the courts have come to play in our daily lives. Here are some examples of the kinds of decisions judges have been making in recent years:

- An Alabama federal district judge barred state prisons from admitting more inmates until prison overcrowding was reduced. Later the judge ordered sweeping changes in the administration of the prison system. The changes cost $40 million a year.
- The Supreme Court decided that laws forbidding abortions in the first three months of pregnancy are not constitutional.
- A federal judge in Cleveland ordered the city's bankrupt school system to stay open despite state laws that required the schools to close when they run out of money. The judge said school officials had wasted money defending segregation.
- In Boston a federal judge ordered the busing of 24,000 students to promote greater integration of blacks and whites. The judge took over administration of one newly integrated high school. He transferred the school's football coach to another job and ordered $125,000 in repairs for the school.
- A federal judge ordered Ohio mental health officials to give patients in state hospitals more freedom, privacy and time for recreation.

An Active Role for Today's Courts

The examples show that in recent years the courts have begun making policy on problems assumed in the past to be the responsibility of school boards, prison superintendents, hospital administrators and legislators. Across the nation, far-reaching federal court decisions have reorganized prison systems, opened and closed schools, filled seats on school boards, determined routes for highways, picked sites for nuclear power plants, and told state and local officials how to do their jobs.

On what grounds have judges taken such actions? Sometimes the courts have a constitutional base for such decisions. For example, changes have been ordered in prison systems like Alabama's, because the courts found prison conditions violated the 8th Amendment's ban on "cruel and unusual punishment." At other times the courts make policy as they interpret the meaning of laws or design remedies for violations of the law. For example, judges have ordered police departments to hire blacks and other minorities in order to comply with federal civil rights laws.

Such decisions have raised questions about how judges use their power to interpret the Constitution. Should judges interpret the Constitution liberally or narrowly?

In this lesson we look at what judicial activism and judicial restraint mean. Next we look at arguments for and against judicial activism. Then we let you decide: how should judges use their power?

Two Points of View -- Activism and Restraint

In 1803 the Supreme Court established the federal courts' powers of judicial review in the landmark case of Marbury v. Madison. Judicial review is the power of federal courts to declare acts of the legislative and executive branches unconstitutional. Since the early years of the 19th century, there has been a continuing debate about how federal judges should use their powers. Should the courts, especially the Supreme Court, practice judicial activism or judicial restraint?

Judicial Restraint. One point of view, judicial restraint, is that the courts should avoid constitutional questions when possible. The courts should uphold acts of Congress and state legislatures unless they clearly violate a specific section of the Constitution.

Judicial restraint means the courts should defer to the constitutional interpretations of Congress, the Presidents, and others whenever possible. The courts should hesitate to use judicial review or in any way promote new ideas or social change. In short, the courts should interpret the law and not intervene in policy-making.

Over the years famous Supreme Court Justices such as Felix Frankfurter, Louis Brandeis and Oliver Wendell Holmes called for judicial restraint. Frankfurter once said, "As a member of this Court I am not justified in writing my opinions into the Constitution, no matter how deeply I may cherish them."

Judicial Activism. The position of judicial activism is that the courts should actively use judicial review to interpret and enforce the Constitution. Judicial activism means the courts should act equally with the legislative and executive branches to determine the meaning of the Constitution.

Judicial activism means judges should use their powers to promote desirable social ends. The courts have both an opportunity and a responsibility to correct injustices, especially when the other branches of government do not act to do so. In short, the courts should play an active role in shaping social policy on such issues as civil rights, procedures in criminal trials and voting rights.

Chief Justice Earl Warren (1954-1969) and many members of the Warren Court, such as Justice William O. Douglas, followed the principle of judicial activism. For example, they boldly used the Constitution to make sweeping social changes in such areas as school desegregation and the rights of those accused of crime.

---

1. Justice Charles Evans Hughes said: "We are under a Constitution, but the Constitution is what the judges say it is."

   Would this statement support judicial activism or judicial restraint? Explain.

2. Justice John Harlan said: "The Constitution is not a panacea (cure) for every blot upon the public welfare, nor should this Court, ordained as a judicial body, be thought of as a general haven for reform movement."

   Does this statement support judicial activism or judicial restraint? Explain.

JUDICIAL ACTIVISM -- PRO AND CON

The judicial activism of federal courts in recent years has stirred controversy over how much power judges should have. Many people have called for an end to judicial activism and a return to judicial restraint. Here are arguments for and against judicial activism.

What do you think? Should the courts play an active, creative role in interpreting the Constitution? Or is greater judicial restraint needed?

Arguments FOR Judicial Activism

Supporters of judicial activism argue it is necessary to correct injustices and promote needed social changes. They say the courts are the institutions of last resort for those in society without political power to get new laws passed.

One lawyer points out: "Federal courts are the only avenue of redress for people who can't be heard elsewhere" such as mental patients or the very poor. When a court holds a prison or mental hospital to be so bad it is unconstitutional, the legislature and the public are more willing to provide for improvements.

Supporters of judicial activism point out that the courts often step in only after governors and state legislatures have refused to do anything about a problem. Neither state legislatures nor Congress did anything about racially segregated schools for decades, they point out. Segregation might still be law today if the Supreme Court had not declared it unconstitutional in 1954.

Judicial activists claim they realize the courts cannot solve every social ill. However, they agree with former Justice Arthur Goldberg, who said: "Our country has sustained far greater injury from judicial timidity in (protecting) citizens' fundamental rights than from judicial (action) in protecting them."

In addition, judicial activists point out that the courts do not create policy to do the job of legislatures. Judges shape policy inevitably as they interpret the law. And, they argue, interpreting the law is the job of the courts.

Chief Justice Earl Warren put it this way:

> When two (people) come into Court, one may say: "an act of Congress means this." The other says it means the opposite. We (the Court) then say it means one of the two or something else in between. In that way we are making the law, aren't we?

Finally, judicial activists argue the Framers of the Constitution expected the courts actively to interpret the Constitution to meet new conditions. One federal judge points out, "The Constitution is not an inert, lifeless body of law, but requires reexamination." Such reexamination, activists argue, is a contribution only the courts can make.

---

1. What are three main points in the argument for judicial activism?

2. Which point do you think is most important? Why?

Arguments AGAINST Judicial Activism

Opponents of judicial activism argue that judges today are making law, not just interpreting it. The issue, they claim, is not whether social problems need to be solved, but whether such problem-solving is a proper role for the courts. By making decisions about how to run prisons or schools, the courts are taking over a job that belongs to the legislative and executive branches of government.

When making such policy decisions, opponents claim the courts are actually rewriting the Constitution, not interpreting it. One prominent lawyer claims:

> Some Supreme Court Justices employ the ruse (trick) of saying, "What we are doing is interpreting the Constitution," when what the court is doing is deciding what is good for the country.

Critics of judicial activism worry that court decisions that so freely "interpret" the meaning of the Constitution will undermine public confidence in and respect for the courts. One legal scholar says, "At some point, a decision will be rendered where both the Congress and President simply say 'No.'"

In addition, critics point out that federal judges are not elected; they are appointed for life terms. As a result, when judges begin making policy decisions about social or political changes society should make, they become "unelected legislators." This means the people lose control of the right to govern themselves.

Further, unlike legislatures, courts are not supposed to be open to influence from interest groups. Thus, different points of view on complex social issues may not be heard as they are in legislatures, where elected officials are responsive to such interests.

Finally, opponents of judicial activism argue judges have no special expertise in handling such complex tasks as running prisons, administering schools or determining hiring policies for businesses. Judges are experts in the law, not in managing our social institutions. One legal scholar put it this way: "For the most part judges are narrow-minded lawyers with little background for making social judgments."

---

1. What are three main points in the argument against judicial activism?
2. Which point do you think is most important? Why?

Make a Judgment About Judicial Activism

You have read arguments for and against judicial activism. What do you think? Answer the following questions about judicial activism.

1. What are some possible bad consequences of judicial activism?
2. What are some possible good consequences of judicial activism?
3. How might judicial activism affect you?
4. How might judicial activism affect others in our society?
5. Is judicial activism a good idea? Should judges follow a policy of judicial activism?

LESSON PLAN AND NOTES FOR TEACHERS

III-10. How Should Judges Use Their Power?

Preview of Main Points

This lesson introduces students to the concepts of judicial activism and judicial restraint. It has students make a judgment about judicial activism in today's society based on pro and con arguments presented in the lesson.

Connection to Textbooks

Judicial activism can be seen as an outgrowth of the power of judicial review. This lesson strengthens textbook treatments of judicial review by having students make a judgment about a current conflict over judicial power.

Objectives

Students are expected to:

1. understand the concepts of judicial activism and judicial restraint;
2. identify examples of judicial activism and judicial restraint;
3. practice the skill of making judgments about complex social issues;
4. develop an increased awareness of the significant role the courts play in modern society.

Suggestions for Teaching the Lesson

Opening the Lesson

- Point out that some people today fear that the courts are seizing domination over many areas of American life. This has led to efforts in Congress to curb the power of the federal courts. As a result, there is controversy today over what role courts should play in our society -- over how judges should use their power. Explain to students that this lesson will help them understand what the current controversy is all about by giving them a chance to evaluate arguments about judicial activism and make their own judgment.

Developing the Lesson

- Distribute copies of the lesson -- "How Should Judges Use Their Power" -- to students. Have students read the lesson and answer the questions on page 253 and the questions at the end of "Arguments FOR..." and "Arguments AGAINST Judicial Activism."
- After students have studied the lesson they have enough information to make a thoughtful judgment about judicial activism today. Use the questions under "Make a Judgment about Judicial Activism" to guide the students' judgment making.

Closing the Lesson

- Students may complete the task of making a judgment by working independently or in small groups.
- Conduct a class discussion about alternative judgments of judicial activism.

III-11. KEY TERMS FOR UNDERSTANDING THE JUDICIAL SYSTEM

Read each of the sentences in the following two lists, which are labeled "Across" and "Down." What word or words should be placed in each of the blanks? Write the correct word or words in the appropriate spaces on the crossword puzzle on page 260.

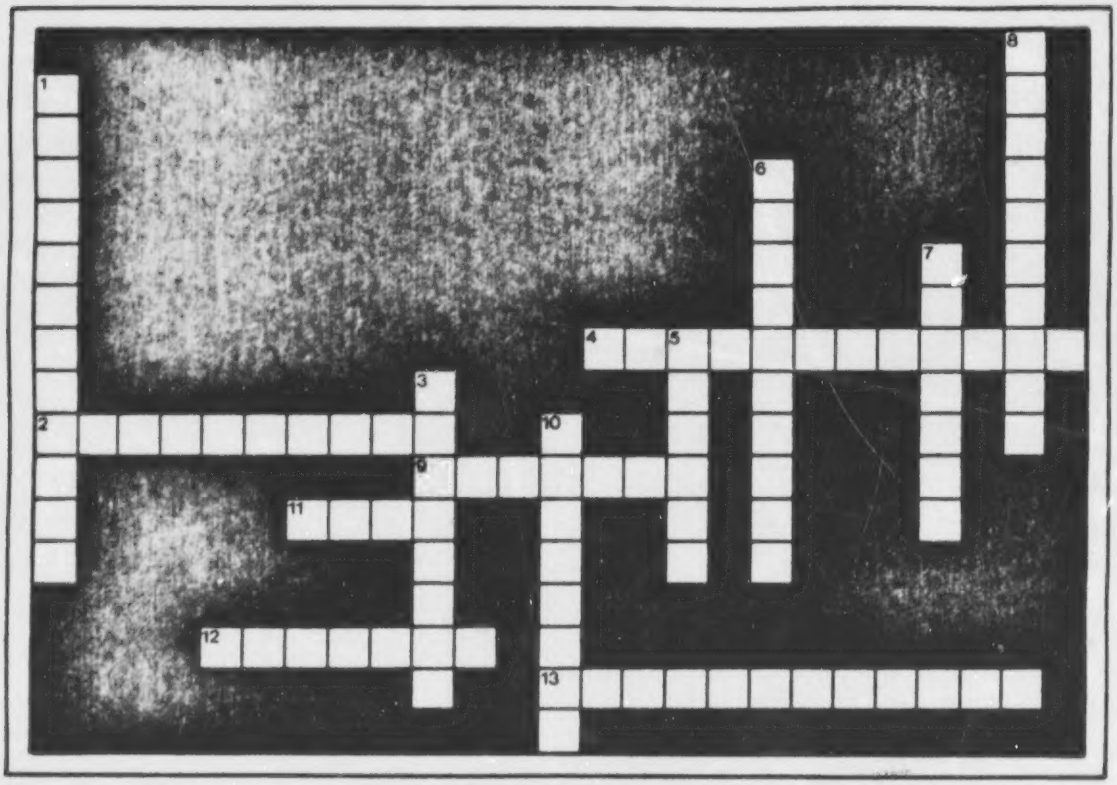
Across

2. The Supreme Court, by issuing an order of ______________ will command a lower court to send it the records of a case for review.
4. "Let the decision stand," or ______________, is a rule, which means that a court's decision will serve as a guide for decisions in future, similar cases.
9. At the top of the federal judicial system is the ______________ Court of the United States.
11. A court's order to a person or group to do what someone has a legal right to expect will be done is called a ______________ of mandamus.
12. A member of the United States Supreme Court is called a ______________.
13. In some cases, an ______________, or "friend of the court," will be allowed to help one of the sides present its arguments before the Supreme Court.

Down

1. An ______________ is a statement in a court opinion not related to the main issue of the case. It may, though, provide an insight to future court decisions.
3. The ______________ courts are at the bottom level of the federal court system.
5. The highest court usually hears cases brought to it by ______________ from a lower court.
6. A ______________ opinion may be presented by a member of the Supreme Court, who judges the case differently from the Court's majority.
7. The decision and explanation for the decision by the Supreme Court is called an ______________.
8. A Supreme Court member may agree with the majority's decision in a case, but not its explanation. If so, the member may present a ______________ opinion.
10. When a court hears cases for the first time, it is the court of ______________ jurisdiction.

The Judicial System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LESSON PLAN AND NOTES FOR TEACHERS

III-11. Key Terms for Understanding the Judicial System

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them understand the Constitution. The key words in this lesson pertain to the judicial system, which serves to interpret the Constitution. This lesson provides practice in the use of words associated with the judicial system.

Connection to Textbooks

The words in this lesson are related to chapters about the courts and judges, which appear in every American government textbook. The words also are related to discussions of the judicial branch of government, which are presented at the end of American history textbook chapters on the Constitutional Convention. In addition, the terms are relevant to history textbook discussions of the Judiciary Act of 1789 and various Supreme Court cases that appear throughout these textbooks. By using the words in this lesson, students may become more effective readers of certain parts of their textbook.

Objectives

Students are expected to:

1. demonstrate comprehension of key words about the judicial system by supplying the missing words in the lists of statements and using the key words to complete the crossword puzzle on page 260 of the lesson;
2. discuss the key words so as to demonstrate knowledge of the judicial system and its relationship to the Constitution.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students the main point of this lesson, which is to provide practice in using key words about the judicial system -- an important aspect of government under the Constitution.

- Remind students of the value of learning key words about aspects of constitutional government. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheets with the lists of words and the crossword puzzle.

- Have students work individually or in small groups to complete the worksheets.

- Tell students to write the correct word or phrase on each blank in the two lists of words on page 259 and to complete the crossword puzzle on page 260.

- Suggest to students that they might want to use the glossary in their textbook, or other pertinent reference material, to help them complete this lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the crossword puzzle.

- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students might also be asked to tell how a particular term may pertain to the concerns of citizens.

Answers to Crossword Puzzle

Across	Down
2. certiorari	1. obiter dictum
4. stare decisis	3. district
9. Supreme	5. appeal
11. writ	6. dissenting
12. justice	7. opinion
13. amicus curiae	8. concurring
	10. original

III-12. CONSTITUTIONAL RIGHTS AND LIBERTIES

Americans often boast of their legal rights and freedoms. Citizens of the United States refer to themselves as "free people" and to their nation as a "free country." The legal rights and freedoms of Americans are based on the U.S. Constitution.

The Constitution says that neither the government nor individuals may take away certain rights of people. However, the Constitution does not permit people to do anything they want to do. The liberties and rights of people are not unlimited. No person should be allowed to interfere with the rights of others. No one should be permitted to disrupt public order or to endanger the security of the nation.

What are the liberties and rights of people under the Constitution of the United States? What are the limits on the use of these rights and liberties? Test your knowledge of constitutional rights and liberties by responding to the quiz, which begins on the next page.

A Quiz About Constitutional Rights and Liberties

How much do you know about the constitutional rights and liberties of individuals in the United States? Show your knowledge by responding either "YES" or "NO" to the 15 items in Column I. Mark an "X" in the appropriate space in Column II to record your responses to the items in Column I. Be prepared to explain your responses.

I	II	
Examples	YES	NO
1. The President has the constitutional right to arrest and detain indefinitely members of certain political parties, who are considered dangerous to the interests of the President.	_____	_____
2. A convicted murderer was sentenced to die in the electric chair. However, when the executioner threw the switch, the chair did not work. The prisoner was taken back to prison and sentenced to die six days later. However, he claimed that placing him in the electric chair a second time would violate his constitutional rights. Do you agree?	_____	_____
3. People have the constitutional right to organize peaceful demonstrations to complain about decisions of government officials.	_____	_____
4. The Congress can pass a law that requires a person to be a Christian to be eligible for appointment to a job in the executive branch of the federal government.	_____	_____
5. Someone who seems to be a threat to security can be thrown in jail and kept there indefinitely, even though there is no evidence that the person has broken a law.	_____	_____
6. Congress can pass a law that requires a certain person to pay a fine, because a majority in Congress believe that the person has violated the rights of underprivileged people.	_____	_____

I Examples	II YES	 NO
7. A person gave a speech in a public park and told listeners to act violently to gain their rights, which the speaker claimed were being withheld unfairly from them. A policeman told him to stop speaking. The speaker refused and was arrested. He claimed that his right to free speech was violated. Do you agree?	____	____
8. A state legislature can pass a law requiring people to pay a tax in order to register to vote in public elections.	____	____
9. John Jones committed a certain crime and, according to the law, received a light punishment. Members of Congress believed that Jones should be punished more severely, so they influenced a majority in Congress to pass a law making the penalty for this crime more severe. Jones had committed the crime before the new law was passed. Nevertheless, he was given the new, more severe punishment. He complained that his constitutional rights were violated. Do you agree?	____	____
10. Children who belonged to an unpopular religious sect sold their church's magazines on the streets. The police stopped them because they were violating a state law forbidding children under age 12 to sell periodicals of any kind on the street. Leaders of the sect said their constitutional right to religious freedom was violated. Do you agree?	____	____
11. Leaders of an unpopular religious sect asked government officials for a permit to hold a meeting in a public park. The request was refused. Nevertheless the sect held a meeting in the park. The leaders were arrested. They complained that their constitutional rights were violated. Do you agree? . . .	____	____

I	II	
Examples	YES	NO
12. A person was arrested for using a "sound truck" (with a loudspeaker) to spread political ideas. However, people complained that he was disturbing them. Was this person's right to free speech violated?	____	____
13. A person was charged with robbery and tried by a six-person jury. He was found guilty and sentenced to prison for life. The convicted person argued that his constitutional rights were violated, because there were six, not twelve, members of the jury. Do you agree?	____	____
14. A male member of the armed services may claim his wife as a "dependent." Thus, he may gain certain housing and medical benefits for her. However, when a female member of the armed services tried to claim her husband as a "dependent" in order to gain similar benefits, her request was denied. She argued that her rights under the U.S. Constitution had been violated. Do you agree?	____	____
15. Police officers came to the home of a man with a warrant for his arrest. They did not have a search warrant. Nonetheless, they forced their way into his house and searched it. They found evidence which was used in his trial to convict him. The convicted man claimed that the policemen violated his constitutional rights when they searched his home and took things from it without a warrant. Do you agree?	____	____

Civil Liberties and Rights in the Constitution

Civil liberties are freedoms spelled out in a constitution. They guarantee that people and property will be protected by law against arbitrary interference by the government. Civil liberties restrain the government from abusing individuals in certain ways.

Civil rights are based on the legal power and duty of the government to protect individuals against certain abuses by other individuals or government officials. The terms civil liberties and civil rights often are used to mean the same thing.

Civil rights and liberties involve legal limits on the power of government. For example, Article 1, Section 9, of the U.S. Constitution says that Congress shall not have the power to suspend "the privilege of the writ of habeas corpus... unless when in cases of rebellion or invasion the public safety may require it." A writ is an order in writing, from a court of law, which requires the performance of a specific act. A writ of habeas corpus means that a person, who has been arrested and held in custody, must be brought before a judge in a court of law. The officials who are holding the prisoner must convince the judge that there are lawful reasons for holding him or her. If the reasons for holding the prisoner are not lawful, then the court frees him or her. The privilege of the writ of habeas corpus is a great protection of individuals against government officials who might want to jail them only because they belong to unpopular groups or express criticisms of the government.

Article 1, Section 9, also says that "No bill of attainder or ex post facto law shall be passed."

A bill of attainder is a law that punishes a person without a trial or fair hearing in a court of law. The person "attained" or punished by legislative act could be forced by law (the bill of attainder) to forfeit property, income, or employment. This would be a way for government officials to punish an individual who criticizes them or who belongs to an unpopular group. The U.S. Constitution protects individual rights and freedoms by denying to the government the power to pass a bill of attainder.

An ex post facto law would make punishable an action committed before the law was passed. Another example is a law that would inflict greater punishment on a criminal action than a previous law would have imposed when the action was committed. The Constitution protects individuals by denying to the government the power to punish them unfairly through the passing of ex post facto laws.

Another example of a legal right or freedom, in the main body of the Constitution, is in Article 6: "No religious test shall ever be required as a qualification to any office or public trust under the United States." This means that a person can hold a public office even if he or she holds unpopular religious beliefs, or expresses no interest in religion. Article 6, Clause 3, of the Constitution protects individuals by denying to the government the power to stop people from serving in the government if they do not express certain religious beliefs.

What civil liberties or rights are guaranteed by Article 1, Section 9, and Article 6, Clause 3, of the Constitution?

Several amendments to the Constitution pertain to civil liberties and rights. Amendments I-X are called the Bill of Rights, because they specify certain basic freedoms and rights that the national government may not take away from an individual. The First Amendment, for example, says that Congress cannot pass any law that violates an individual's freeof speech, freedom of the press, freedom to assemble peacefully, and freedom to petition the government.

Amendment II limits the power of the national government to take away the individual's right to keep and bear arms, or weapons.

Amendment III says that the government cannot, in time of peace, house soldiers in a private dwelling without the consent of the owner.

Amendment IV protects individuals against unreasonable searches and seizures of their property. Conditions are established for the lawful issuing and use of search warrants by government officials.

What is said in Amendments I-IV about the fundamental rights and liberties of individuals?

AMENDMENT I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendments V-VIII are about the legal procedural rights of individuals. They describe procedures that the national government must guarantee to individuals in civil and criminal cases. For example, the Fifth Amendment protects an individual from these actions: (1) being held to answer for a serious crime unless appropriate evidence is presented to a grand jury that indicates the likely guilt of the individual; (2) being tried more than once for the same offense; (3) being forced to act as a witness against oneself in a criminal case; (4) being deprived of life, liberty or property without due process of law (fair and proper legal procedures); and (5) being deprived of property without fair compensation.

The Sixth Amendment guarantees these rights to a person accused of a crime: (1) a speedy, public trial by an impartial (unbiased) jury of the state and community in which the crime was committed; (2) information about what one has been accused of and why; (3) a meeting with hostile witnesses; (4) means of obtaining favorable witnesses; (5) help of a lawyer.

The Seventh Amendment guarantees the right of a trial by jury in civil cases where the value in the controversy is more than twenty dollars.

The Eighth Amendment protects individuals against cruel and unusual punishments and the establishment of excessive bail.

What is said in Amendments V-VIII about legal procedures that must be followed in civil and criminal cases? What rights are guaranteed to individuals accused of crimes?

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

AMENDMENT VIII

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendments IX and X pertain to retention of rights not specifically mentioned in the Constitution. For example, Amendment IX says that the rights guaranteed in the Constitution are not the only rights that individuals may have. They should not be interpreted as denying or taking away other rights or liberties, which are retained by the people.

Amendment X says that powers not granted to the United States government by the Constitution, or prohibited by it (the Constitution) to the states, are retained by the states and the people.

What is said in Amendments IX and X about the retention of rights by the people and the states?

AMENDMENT IX

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Six amendments passed since 1791, when the Bill of Rights was ratified, also pertain to civil liberties or rights. These are Amendments XIII, XIV, XV, XIX, XXIV, and XXVI.

Amendments XIII, XIV, and XV were passed after the Civil War. The Thirteenth Amendment abolished slavery and the Fifteenth Amendment barred the states from denying any citizen the right to vote because of race, color or previous condition of being a slave.

The Fourteenth Amendment defined citizenship so that former slaves could not be excluded by any state from the rights and privileges of citizenship. Section 1 is the part of Amendment XIV that pertains to civil liberties and rights. It has been interpreted by the Supreme Court to limit the power of state governments to interfere with basic liberties and legal procedural rights of individuals. Amendments I and V, for example, prohibited the national government from taking away from individuals certain liberties and legal procedural rights. However, these amendments did not limit the power of state governments. Since the 1920's, the Supreme Court has interpreted the "due process" clause of the Fourteenth Amendment to apply many protections of the Bill of Rights to state governments. For example, in 1925 the Court ruled that the "due process" clause meant state governments could not interfere with citizens' First Amendment rights to free speech. The phrase "due process of law" refers to all the proper legal steps guaranteed by the Constitution and the courts. The intention is to assure people of fair treatment under the law.

What is said in Amendments XIII, XIV, and XV about the basic freedoms and legal procedural rights of individuals?

AMENDMENT XIII

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws....

AMENDMENT XV

> Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendments XIX, XXIV, and XXVI extended and protected the voting rights of certain individuals. Amendment XIX extended suffrage to women. Amendment XXIV prohibited states from requiring people to pay a tax to qualify to vote. This extended the right to vote to people who could not afford to pay a poll tax. Amendment XXVI lowered the minimum voting age to eighteen.

What is said in Amendments XIX, XXIV, and XXVI about the civil rights of individuals?

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have the power to enforce this article by appropriate legislation.

AMENDMENT XXIV

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for senator or representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXVI

Section 1. The right of citizens of the United States who are eighteen years of age or older to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

As described above, certain civil liberties and rights are included in the U.S. Constitution. In some cases, the meaning and application of these liberties and rights is rather clear. In these cases, it is rather easy to decide whether or not an individual's rights have been violated. For example, during ordinary times, an individual in custody has an unqualified right to obtain a writ of habeas corpus. But the Constitution says that this right may be suspended under certain conditions, such as rebellion or invasion. The Supreme Court may be involved in deciding exactly when this right may or may not be suspended. It is the job of the Supreme Court to interpret the meaning of civil liberties and rights in cases where their application is not clear. The statements of the Constitution provide a legal framework to guide decisions about civil liberties and rights.

Reviewing Knowledge About Constitutional Rights and Liberties

1. Match the right or liberty in Column I with the place in the U.S. Constitution which defines or refers to it (Column II).

Column I

_____ 1. writ of habeas corpus

_____ 2. freedom of speech

_____ 3. right to trial by jury

_____ 4. no ex post facto laws

_____ 5. no bills of attainder

_____ 6. freedom of religion

_____ 7. right to due process (fair and equal treatment under the law)

_____ 8. no religious test as qualification for holding public office

_____ 9. right of women to vote in public elections

_____10. protection against unreasonable searches and seizures of property

Column II

A. Article I

B. Article II

C. Article III

D. Article VI

E. Amendment I

F. Amendment II

G. Amendment IV

H. Amendment V

I. Amendment VI

J. Amendment XIX

K. Amendment XXIV

2. Define these terms. Give an example that fits each of your definitions. Tell what each term has to do with constitutional rights and liberties.

   a. ex post facto law
   b. bill of attainder
   c. writ of habeas corpus
   d. religious test to qualify for public office
   e. due process
   f. unreasonable search and seizure
   g. First Amendment freedoms

3. Which parts of the Constitution deal with legal procedural rights of individuals? (List the correct Articles or Amendments.)

4. Which Amendments deal with guarantees of basic freedoms of individuals? What are these freedoms?

5. List and provide examples of at least three limitations on the constitutional rights and liberties of people in the United States.

6. In your opinion, which constitutional rights or liberties are the most important. Identify and rank the 5 most important rights or liberties. Be prepared to explain your selection and ranking of these items.

Answers to the Quiz About Constitutional Rights and Liberties

1. NO. Article I, Section 9, of the U.S. Constitution says that individuals have "the privilege of the writ of habeas corpus" which prevents a government official from arresting and holding individuals indefinitely without lawful reasons. Furthermore, Amendment I guarantees the right of individuals to belong to a political party that opposes the President.

2. NO. The U.S. Supreme Court decided that the prisoner's constitutional rights were not violated. He had been convicted according to legal procedures set forth in Amendment V of the U.S. Constitution. See the case of Louisiana ex. rel. Francis v. Resweber (1947).

3. YES. This right is guaranteed by the First Amendment.

4. NO. According to Article VI of the U.S. Constitution, "No religious test shall ever be required as a qualification to any office or public trust under the United States. A person has the constitutional right to be eligible for a position in the government regardless of his or her religious beliefs, or lack of them.

5. NO. The privilege of the writ of habeas corpus (Article I, Section 9) protects an individual against arbitrary arrest and detention.

6. NO. Article I, Section 9, denies to Congress the power to pass a "bill of attainder." A bill of attainder is a law that would punish an individual without a trial in a court of law. Individuals are protected against the power of Congress to take away their legal rights to defend themselves in a court of law against criminal charges and/or official punishments.

7. NO. The U.S. Supreme Court has decided that the right to free speech is not unlimited. Thus, the First Amendment guarantee to free speech does not protect public incitement to riot or commit violence. See Feiner v. New York (1951).

8. NO. The 24th Amendment to the U.S. Constitution bans payment of poll taxes as a condition for voting in public elections. People who cannot or will not pay such a tax have the right to vote.

9. YES. Article I, Section 9, of the U.S. Constitution denies Congress the power to pass an ex post facto law, which is described in this example. A person has the right to be judged and punished only according to laws in force at the time he or she was convicted of criminal behavior.

10. NO. A state government may pass and enforce laws to protect children. This kind of action does not necessarily violate the constitutional right of freedom of religion, which is guaranteed by Amendment I. See *Prince v. Massachusetts* (1958).

11. YES. The U.S. Supreme Court has decided a government does not have unlimited power to allow or prevent peaceful and orderly public meetings. In this case, constitutional rights guaranteed by the First Amendment were violated. See *Niemotkov v. Maryland* (1951).

12. NO. The U.S. Supreme Court has decided that there are limits to an individual's constitutional right of free speech. Thus, a government may pass and enforce laws against noises that cause public disturbance. See *Kovacs v. Cooper* (1949).

13. NO. A person has the constitutional right to a trial by jury, but the Constitution does not say how many people should serve on a jury. (See Amendment VI.) See *Williams v. Florida* (1970).

14. YES. The U.S. Supreme Court has decided that this case involved a violation of the woman's constitutional right of "due process" (fair and equal treatment under the laws) which is guaranteed by Amendment V. See *Frontiero v. Richardson* (1973).

15. YES. The U.S. Supreme Court has decided that this kind of search violates a person's constitutional guarantee against unreasonable search and seizure, which is set forth in the Fourth Amendment. See *Chimel v. California* (1969).

LESSON PLAN AND NOTES FOR TEACHERS

III-12. Constitutional Rights and Liberties

Preview of Main Points

This lesson is about constitutional rights and liberties in the United States. It draws attention to rights and liberties that are set forth in the U.S. Constitution. Furthermore, questions are raised about the various meanings of these rights and liberties in particular cases and about limitations on these rights and freedoms.

Connection to Textbooks

This lesson can be used with government textbook chapters on civil liberties and rights.

Objectives

Students are expected to:

1. speculate about the constitutional rights and liberties of people in the United States in response to a series of examples in a quiz;
2. discuss speculatively issues about constitutional rights and liberties that are raised by discussion of a series of examples in a quiz;
3. identify the parts of the U.S. Constitution that set forth civil liberties and rights;
4. identify examples of civil liberties and rights guaranteed by the U.S. Constitution;
5. distinguish examples of civil rights and liberties that are set forth rather clearly and exactly in the Constitution from those that have raised issues requiring interpretation by the Supreme Court.

Suggestions for Teaching the Lesson

The first part of this lesson, which involves the 15-item quiz, can be used as a "springboard" to textbook discussions of civil liberties and rights. The items in this quiz should serve to focus attention on and arouse curiosity about the civil liberties and rights of Americans. Discussion of these items can set the stage for the systematic study of constitutional rights and liberties in a textbook. The second part of this lesson, which involves a description of rights and liberties in the U.S. Constitution, can also be used as a follow-up to discussion of the introductory quiz.

Opening the Lesson

- Ask students the meaning of constitutional rights and liberties. Ask them for examples of their legal rights and freedoms. Ask them why it is important to know about their rights and liberties.

- Have students read the first page of the lesson, which challenges them to demonstrate their knowledge of constitutional rights and liberties by taking a quiz, which appears on the next page of the lesson. Reinforce this challenge. However, inform students that they will not receive a grade for their performance on the quiz. Rather, the purpose is to initiate discussion of the rights and liberties that they have under the Constitution.

Developing the Lesson

- Distribute copies of "A Quiz About Constitutional Rights and Liberties" to students. Make certain that everyone understands the directions. Then have students take the quiz. Don't permit students to see the "Answer Sheet" for this quiz, which can be found at the end of the lesson.

- Discuss student responses to each item on the quiz. Ask them to explain why they responded "YES" or "NO" to each item. Encourage a "free wheeling" and speculative discussion. Do not provide answers at this point in the lesson. Rather, encourage students to raise issues and questions and to explore alternative answers in the discussion. Don't show the "Answer Sheet" for the quiz to students. This should be done at the conclusion of the lesson.

- Tell students they will have an opportunity to study information that pertains to the quiz. They can check their answers against what they learn from this reading assignment.

- Have students read the description of "Civil Liberties and Rights in the Constitution" that constitutes the remainder of the lesson.

- Have students answer the questions at the end of the lesson, which involve review of the knowledge included in the preceding section of the lesson. Discuss these questions with them.

Concluding the Lesson

- Challenge students to take the quiz again. Perhaps they will change some of their answers in the light of knowledge gained from their work with this lesson.

- Distribute a copy of the "Answers to the Quiz About Constitutional Rights and Liberties." This answer sheet can be found at the end of the lesson. Review these answers with students. Point out that some items are rather clear examples of rights or liberties that are set forth in the Constitution. In contrast, other items are examples of constitutional issues that have been interpreted by the Supreme Court in particular cases. Emphasize that continuing issues have been raised about limitations on the exercise of rights and liberties. For example, at what point does the freedom of one person interfere with the freedom or rights of another person? When does the exercise of freedom by a person endanger public order or the security of the nation? These questions often are difficult to answer. They are dealt with by judges in courts of law who must interpret the Constitution as it applies to particular cases.

- Invite students to raise questions about any of the items on the answer sheet.

Suggested Reading

Brant, Irving. The Bill of Rights: Its Origins and Meaning (Indianapolis: Bobbs-Merrill Company, 1965).

Cohen, William, Schwartz, Murray, and Sobul, DeAnne. The Bill of Rights: A Source Book (Beverly Hills, California: Benziger, 1976).

Pleasants, Samuel. The Bill of Rights (Columbus, Ohio: Charles E. Merrill Books, Inc., 1966).

Suggested Films

INTERROGATION AND COUNSEL

The Fifth and Sixth Amendments are introduced in dramatic situations involving an accused person's privilege against self-incrimination and his right to legal counsel. From THE BILL OF RIGHTS series, Churchill Films, 1967, 21 minutes.

FREEDOM TO SPEAK: THE PEOPLE OF NEW YORK VS. IRVING FEINER

This film combines reenactments with interviews of participants in the case of a college student whose conviction for incitement to riot was upheld by the U.S. Supreme Court. It shows how constitutional interpretations vary with time and changes in public opinion and raises the issues of freedom vs. security, liberty vs. law, right vs. responsibility, and liberty vs. license. From OUR LIVING BILL OF RIGHTS series, Encyclopedia Britannica Educational Corp., 1967, 23 minutes.

THE STORY OF A TRIAL

Using a case involving two young men accused of a misdemeanor, the film provides an introduction to procedures that protect citizens' rights and the constitutional safeguards of the accused. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1976, 21 minutes.

FREEDOM OF RELIGION

The Bill of Rights guarantees freedom of religion, but what if laws are broken or life is endangered in the exercise of that freedom? The film uses a blood transfusion case to discuss constitutional issues and analyze when society's interest outweighs an individual's constitutional right to freedom of religion. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1969, 21 minutes.

FREEDOM OF SPEECH

The film uses the case of a controversial speaker convicted of disturbing the peace to stress the importance and complexity of the issues involved in free speech. The lawyers argue the constitutional issues in an appeals court. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1968, 21 minutes.

FREEDOM OF THE PRESS

A reporter refuses to cooperate in a criminal investigation, protecting the source of his news story. The film questions the meaning of the First Amendment's prohibition against laws that abridge freedom of the press. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1973, 21 minutes.

DUE PROCESS OF LAW

A college student is suspended following a rock-throwing incident during a campus demonstration. The film presents opposing interpretations of the due process clause of the

Fifth Amendment, and suggests that due process is time consuming and often in conflict with the immediate need to avoid further violence. The result of the student's application for reinstatement is left open-ended. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1971, 23 minutes.

EQUAL OPPORTUNITY

Two factory workers of different races compete for the same promotion. The film reviews the constitutional issues involved in establishing equal employment opportunity and deals with seniority, union contracts, qualifications of competing employees, and differing interpretations of "discrimination." The film is open-ended. From BILL OF RIGHTS IN ACTION series, BFA Educational Media, 1969, 22 minutes.

III-13. OPINIONS ABOUT CIVIL LIBERTIES AND RIGHTS

Civil liberties are freedoms spelled out in a constitution. They guarantee that people and property will be protected by law against arbitrary interference by the government. Civil liberties restrain the government from abusing citizens in certain ways.

Civil rights are acts of government to protect citizens against certain abuses by other citizens or government officials. The terms civil liberties and civil rights often are used to mean the same thing.

Neither civil liberties nor civil rights, however, give people unlimited freedom. For example, freedom of speech does not mean that a person can incite a riot or ruin another person's reputation by spreading lies.

What do Americans believe about the liberties and rights of people under the Constitution? What are your opinions about the freedoms and opportunities of people?

This lesson is about responses to public opinion polls concerning freedoms of people under the Constitution. Your opinions will be solicited. You will also have an opportunity to examine the responses of other Americans to the same or similar public opinion poll items.

Directions for Responding to an Opinion Poll

Read each statement on the next page and place a check in the column that indicates your belief or opinion (Agree or Disagree). Answer each item separately and continue until all 15 are complete. Leave no blanks.

Respond to each item quickly with the first answer that comes to mind. This is not a test of your knowledge. There are no right or wrong answers.

Respond to the items in order, from 1-15. Answer each item before moving to the next one. Don't skip any items.

Once you have made an answer, do not erase or change it.

When you have finished, put down your pencil or pen and wait for further instructions.

PUBLIC OPINION POLL ABOUT CIVIL LIBERTIES AND RIGHTS

Items	Responses	
	Agree	Disagree
1. People should have the right not to be sentenced to cruel and unusual punishments.		
2. The American Nazi Party wants to have a march and rally in your town. They should be allowed to do this.		
3. Newspapers that preach revolution should be banned.		
4. Police and other groups have sometimes banned or censored certain books and movies in their cities. They should have the power to do this.		
5. Every citizen should have the right to hold an orderly public meeting to express ideas.		
6. Every citizen should have the right to voice any opinion s/he wants to, as long as it does not involve slander or intentional lies.		
7. A person convicted of murder should be executed in the same manner in which s/he killed the victim.		
8. Citizens should have the right to print any point of view they want to print, as long as it is true.		
9. If a leader of the communist party wanted to give a speech in this town advocating a change in our form of government, s/he should be allowed to speak.		
10. Atheists should not be allowed to give speeches on the radio or television.		
11. People should be secure from unreasonable searches and seizures.		
12. Books that support communism or atheism should be removed from the library.		
13. A woman should have the right to speak at a community meeting, urging that a law be passed that would limit the number of children a family can have.		
14. Torture is not too strong for a drug pusher who gives heroin to a 12-year-old.		
15. To effectively combat terrorism, it is sometimes necessary for police to secretly break into the headquarters of suspects to obtain evidence.		

STUDENT WORKSHEET 1

Tallying Opinions About Civil Liberties and Rights

GROUP I					GROUP II				
Item 1	Agree	_____	Disagree	_____	Item 7	Disagree	_____	Agree	_____
					Item 14	Disagree	_____	Agree	_____
Item 5	Agree	_____	Disagree	_____	Item 9	Agree	_____	Disagree	_____
					Item 13	Agree	_____	Disagree	_____
Item 6	Agree	_____	Disagree	_____	Item 2	Agree	_____	Disagree	_____
					Item 10	Disagree	_____	Agree	_____
Item 8	Agree	_____	Disagree	_____	Item 3	Disagree	_____	Agree	_____
					Item 4	Agree	_____	Disagree	_____
					Item 12	Disagree	_____	Agree	_____
Item 11	Agree	_____	Disagree	_____	Item 15	Disagree	_____	Agree	_____

STUDENT WORKSHEET 2

Interpreting Data About Civil Liberties and Rights

General Opinions About Rights (Group I)

1. Which of these 5 items received the greatest support in your class? (Support is indicated by the total score in the left-hand column "Agree.") ______________

2. Is there any pattern (general tendency) in the responses to these items? _________ If so, describe the pattern.

   ____

3. Write a one-sentence summary statement, supported by these data (responses to items in Group I), that describes your class's opinions about civil liberties and rights in the Constitution. ____

   ____

Applying Rights to Specific Situations (Group II)

In answering these questions, note that "support" for rights is indicated by the total scores in the left-hand column, sometimes "Agree," sometimes "Disagree."

1. Which item received the greatest support from your class?

   ____

   Which item received least support? ______________________

2. Is there any pattern (general tendency) in the responses to these items? _______________ If so, describe the pattern and compare it to the pattern of responses in Group I items.

   ____

   ____

   ____

3. Notice that each item of Group I is associated with one, two, or three items in Group II. Circle the response below that most accurately describes the pattern (general tendency) of results across these two groups.

   a. Support for Item 1 is (stronger, the same, weaker) than Items 7 and 14.

   b. Support for Item 5 is (stronger, the same, weaker) than Items 9 and 13.

c. Support for Item 6 is (stronger, the same, weaker) than Items 2 and 10.

d. Support for Item 8 is (stronger, the same, weaker) than Items 3, 4, and 12.

e. Support for Item 11 is (stronger, the same, weaker) than Item 15.

4. You may have discovered that the items in Group II asked you to apply a right in a specific situation. In Group I, you were responding to the rights in general. Given the pattern of responses you've found, and the comparisons in Question 3, what general statements can you make to describe your class's opinions about civil liberties and rights?

a. ____

____

b. ____

____

RESULTS OF NATIONAL OPINION POLLS

So far you've explored attitudes of you and your classmates toward parts of the Bill of Rights. Many of the statements to which you responded in this survey, however, have appeared in national surveys of both adults and students. In interpreting the results of those surveys, you will want to focus on three questions.

(a) Is there a pattern of results that emerges from these surveys?

(b) If so, how does it compare to your own survey findings?

(c) How can we explain these results overall?

General Attitudes

Over the years, the vast majority of Americans have expressed strong support for general statements of rights. More than 90% of respondents have agreed that:

1. the minority should be free to criticize majority opinions;

2. people in the minority should be free to try to win majority support;

3. citizens have the right to express any opinion they wish.

Similar majorities agree that people should have the right to hold meetings and to print any point of view.

However, as shown below, people have not been as likely to agree that certain civil liberties or rights should be enjoyed by unpopular individuals or groups.

Opinions About Rights Applied to Situations (National Opinion Polls)

		Agree
1.	Torture is an acceptable punishment (Item 4)	47% (1)
2.	Prevent woman's speech about limiting family size (Item 13)	*60% (2)
3.	Ban speech by unpopular group (Item 9)	56% (3)
4.	Review protest meeting to prevent preaching government overthrow (Item 10)	53% (1)
5.	Ban newspapers that preach revolution (Item 3)	52% (1)
6.	Ban or censor certain books and movies (Item 4)	*60% (4) 57% (1)
7.	Outlaw groups that preach government overthrow	67% (1)
8.	Prevent newspaper from publishing criticism of elected officials	*33% (2)
9.	Should not allow atheist to hold office	*34% (2)
10.	Should have laws against publishing communist literature	*61% (4)

---

* High school students; all others are adult respondents.

(1) Louis Harris. The Anguish of Change (New York: W. W. Norton & Co., Inc., 1973), pp. 278-282.

(2) National Assessment of Educational Progress. Changes in Political Knowledge and Attitudes, 1969-76 (Denver: Education Commission of the States, 1978), pp. 7-14.

(3) James Prothro and Charles Grigg. "Fundamental Principles of Democracy," Journal of Politics, Vol. 22, 1960, pp. 276-294.

(4) H. H. Remmers. Anti-Democratic Attitudes in American Schools (Evanston: Northwestern University Press, 1963), pp. 61-72.

STUDENT WORKSHEET 3

1. Considering the responses to both general statements of rights and specific applications of these rights, how would you describe Americans' opinions about civil liberties and rights. (Remember, your description should be supported by the data presented on page 288.)

2. Compare these national survey results to those of your class. In what ways are they similar or different?

3. a. In the light of survey results, how do you think most Americans, of recent years, would have reacted to this statement by Voltaire: "I disagree with all that you say, but I will fight to the death for your right to say it."

   b. What is your reaction to Voltaire's statement?

LESSON PLAN AND NOTES FOR TEACHERS

III-13. Opinions About Civil Liberties and Rights

Preview of Main Points

The lesson focuses attention on the meaning of civil liberties and rights in the Constitution. Students respond to an opinion survey derived in part from items used in polls by Harris, Remmers, and other social scientists. As the class interprets the results, questions are raised about the meaning of these rights and liberties in theory and in practice. The lesson concludes with an opportunity for students to compare their responses to actual attitude surveys and opinion polls administered to national samples of adults and students.

Connection to Textbooks

This lesson enriches textbook discussions of civil liberties and civil rights by giving students the opportunity to interpret relevant public opinion survey data not found in textbooks.

Objectives

Students are expected to:

1. react to statements about civil liberties and rights by completing an opinion poll;
2. organize and interpret responses of class members to an opinion poll about civil liberties and rights;
3. infer from data collected in national surveys that most Americans support general statements about civil rights and liberties;
4. infer from given data that Americans' support for civil liberties and rights applied to specific cases is significantly less than for the general statements of rights;
5. speculate about likely consequences for the nation arising from a split between theoretical acceptance and practical rejection of certain civil liberties and rights.

Suggestions for Teaching the Lesson

This lesson can serve as a "springboard" to textbook material about civil liberties and rights. Or the lesson could be an application exercise giving students an opportunity to use concepts learned in their textbook to interpret opinion poll data.

Opening the Lesson

- Explain that politicians and social scientists use public opinion surveys both as a guide to policy decisions and as a measure of the health and well-being of American democracy. Mention that our particular area of interest in this lesson is civil liberties and rights. This survey asks for their opinions about actions people should and should not be allowed to do.
- Instruct students not to put their names on the surveys, so that their responses will be anonymous. Following the directions on the survey, students should respond to each item according to their opinion. This is not a test with correct or incorrect answers.

Developing the Lesson

- Distribute copies of the survey. Be certain that students understand the directions for completing the opinion poll. Remind students not to put their names on the paper. Students should be finished within 10 minutes. They should respond quickly to each item.
- Collect all answer sheets when students have completed their tasks. Shuffle the papers and redistribute them to students in such a way that no student will have his or her own answer sheet.
- Distribute copies of STUDENT WORKSHEETS 1 and 2. Students should set aside WORKSHEET 2 momentarily. Notice on WORKSHEET 1 -- "Tallying Opinions About Civil Liberties and Rights" -- that the items have been placed in two groups.
- Begin with the smaller group of items -- Group I -- which includes Items 1, 5, 6, 8, and 11. For each item, ask students to raise their hands if the response on the sheet in front of them, for that item, is "Agree." Announce the total and record the number in the appropriate box on the Tally Sheet. Students should do the same on their copies of the Tally Sheet. In the same manner, record the number of "Disagree" responses for each item.

- Turn now to the remaining items. Notice first that the response categories ("Agree"/"Disagree") vary in their arrangement on the page under Group II. The reason for this lies in the fact that for some items (9, 13, 2 and 4), an "Agree" response indicates support for a particular right, as was the case for all items in Group I. For the remaining items, however, an "Agree" indicates rejection of that right. In Item 14, for example, a favorable response supports torture as punishment, thereby rejecting a belief that punishment should not be cruel or unusual. Thus, the alignment of response categories on the Tally Sheet insures that support for civil rights and liberties is consistently recorded in the first (or left) column, and rejection is reflected in the second (or right) column.

  The same change relates to the order of items listed. This order was chosen to compare more easily responses toward specific applications of rights (items in Group II) to responses toward general statements about rights (Group I). The relationship of items to rights is as follows: freedom from cruel or unusual punishment (Items 1, 7, 14), freedom of speech (Items 5, 9 and 13), freedom of assembly (Items 6, 2, 10), freedom of the press (Items 8, 3, 4, and 12), and freedom from unreasonable searches and seizures (Items 11 and 15).

- With the two exceptions explained above, the procedure for tallying responses to Group II items is identical to that of Group I. Because of the different item display, however, students should be cautioned to look at the correct item of the survey before raising their hands to report a response, and then to place the total in the correct box for the correct item on the Tally Sheet.

- With all items now tallied, direct the students' attention to the first set of items. Lead a discussion in which students analyze their results, using the first section ("General Opinions About Rights") of WORKSHEET 2 — "Interpreting Data About Civil Liberties and Rights." Typically, students (and adults) respond very favorably to these general statements of rights, as will be evident when you present the results of other surveys later in the lesson.

- Moving to the second group of items in WORKSHEET 2, you might choose to explain the basis for the arrangement of items and responses on the Tally Sheet.

- Lead a discussion in which students analyze the results, using the second section ("Applying Rights to Specific Situations") of WORKSHEET 2. Typically, support for specific application of rights tends to be lower than for general belief statements. If this pattern is not evident in your students' set of responses, it will appear when they view results from national surveys.

Concluding the Lesson

- Distribute copies of "Opinions About Rights Applied to Situations (National Opinion Polls)" and STUDENT WORKSHEET 3. Note that some of the items on the survey they have taken are the same as, or similar to, questions asked of thousands of citizens, both pre-adults and adults.
- Have students interpret the national survey results and compare them to the results of their own survey. Questions 1-3 of WORKSHEET 3 can serve as a guide to their analysis.
- Have students discuss the implications of their findings for the health and well-being of the Bill of Rights. Question 3 of WORKSHEET 3 provides a catalyst for discussion.
- You may wish to have students discuss and/or explore issues and questions associated with any of the 15 items in the public opinion poll. These items reflect constitutional issues in the lives of citizens.

Suggested Films

FREE PRESS/FAIR TRIAL

This film reports in depth on the dilemma of balancing First Amendment guarantees of an uninhibited press and the public's right to know with the Sixth Amendment's guarantee of a defendant's right to a speedy and fair trial by an impartial jury. Film clips from the trials of Bruno Hauptman, Dr. Sam Sheppard, Bettie Sol Estes, Lee Harvey Oswald, and Wayne Henley, Jr., plus clips of Nixon and Agnew claiming press prejudices, are included. WNET/Teaching Film Custodians, 1973, 30 minutes, black and white.

THE JUST AND ESSENTIAL FREEDOM

The film deals with Watergate, the Vietnam War, the Pentagon Papers, censorship and disclosure of sources to examine the confrontations between government and the press under the First Amendment. Uses several presidents to illustrate relations with the press. Through conflicts of Jefferson and Adams it explains the background of the First Amendment. Xerox Films, 1973, 52 minutes.

THE JUST FREEDOM

The First Amendment is examined in depth, with examples of how the press operates at local and national levels. The film focuses on the important historical role of the news media in the United States, and compares U.S. newspaper and television news coverage with that of other countries. Associated Press, 1974, 22 minutes.

SPEECH AND PROTEST

As an introduction to the First Amendment, this film dramatizes situations where freedom of speech or assembly might be questioned. Students discuss foreign policy and academic freedom, and an anti-war demonstration at a chemical plant is enacted. Alternative conclusions are included. From the BILL OF RIGHTS series, Churchill Films, 1967, 21 minutes.

III-14. WHAT DOES THE CONSTITUTION SAY ABOUT CIVIL LIBERTIES AND RIGHTS?

Read each of the following statements. Decide whether or not each statement describes a situation that agrees with the words of the U.S. Constitution. If so, answer YES. If not, answer NO. Circle the correct answer under each statement.

Identify the number of the Article and Section or the Amendment to the Constitution which supports your answer. Write this information on the line below each item.

CLUE: Answers to these items can be found either in Article I, Sections 9 and 10, or in Amendments I-VIII or in Amendments XIV-XXVI.

1. The President, with approval from Congress, suspended the writ of habeas corpus in order to intimidate and silence critics of the government.

YES NO

____

2. A group of state legislators from New England, who were opposed to the President, held a peaceful protest demonstration on the widewalk in front of the White House.

YES NO

____

3. Mr. Rice was denied the right to vote in a presidential election because he had not paid his poll tax.

YES NO

____

4. Federal government officials arrested John Evans for breaking a law that had been passed three months after Evans committed the action that led to his arrest.

YES NO

____

5. Police were conducting a house-to-house search looking for evidence of illegal activities. When asked by one resident for a search warrant, the police replied that they didn't need one and entered the house despite the resident's objections.

YES NO

6. Joe Smith was arrested for bank robbery, tried and found not guilty by a federal court. Based on new evidence, he was arrested and tried a second time by the federal government. This time the jury found him guilty.

YES NO

7. A classroom teacher criticized the policies of the local juvenile court. A deputy sheriff took him from his classroom, without a warrant, to the judge's chambers for an official reprimand.

YES NO

8. The Ku Klux Klan petitioned the city council of a small Midwestern city for the right to hold a peaceful demonstration around the Court House square. It was denied.

YES NO

9. A public school system refused to fire teachers who did not belong to a Christian church, even though the majority of citizens in the community demanded that this be done.

YES NO

10. A local newspaper published several news stories severely criticizing the town's police chief and city council. The city council warned the paper's editor that the paper would be closed by the police if it printed any more critical stories.

YES NO

LESSON PLAN AND NOTES FOR TEACHERS

III-14. What Does the Constitution Say About Civil Liberties and Rights?

Preview of Main Points

The purpose of this lesson is to increase students' knowledge of certain parts of the Constitution that pertain to civil liberties and rights.

Connection to Textbooks

This lesson can be used to reinforce American government textbook treatments of constitutional liberties and rights. The lesson can be used to supplement American history textbook discussions of main principles of the Constitution, which usually follow treatments of the Constitutional Convention.

Objectives

Students are expected to:

1. demonstrate knowledge of the constitutional guarantees of civil liberties and rights by responding correctly with a "YES" or "NO" answer to each item in this lesson;
2. support their response to each item by listing the correct reference in the U.S. Constitution (Article and Section);
3. increase knowledge of certain parts of the Constitution that pertain directly to civil liberties and rights;
4. practice skills in locating and comprehending information in the U.S. Constitution;
5. increase awareness of how the Constitution applies to the concerns of citizens.

Suggestions for Teaching the Lesson

Opening the Lesson

- Inform students of the main points of the lesson.
- Be certain that students understand the directions for the lesson.

Developing the Lesson

- Have students work individually or in small groups to complete the items in this lesson.
- You may wish to have different students report their answers to the items in this lesson. An alternative is to distribute copies of the answers, when appropriate, so that students can check their responses against the correct answers.

Concluding the Lesson

- Ask students to explain what each item in the exercise has to do with civil liberties and rights. By doing this, students can demonstrate comprehension of the idea of civil liberties and rights.
- You may wish to have students examine and discuss in more detail issues and questions associated with the items of this lesson.

Answers

1. NO, Article I, Section 9, Clause 2.
2. YES, Amendment I.
3. NO, 14th Amendment.
4. NO, Article I, Section 9, Clause 3.
5. NO, 4th and 14th Amendments.
6. NO, 5th Amendment.
7. NO, 1st and 14th Amendments.
8. NO, 1st and 14th Amendments.
9. YES, Amendments I and XIV.
10. NO, 1st and 14th Amendments.

III-15. KEY TERMS FOR UNDERSTANDING CIVIL LIBERTIES AND RIGHTS

Match the 10 words or phrases in List I with the 15 statements that follow in List II. Write the letter, which identifies the correct answer in List I, in the space next to the appropriate statement in List II. Each item in List I may be used as an answer one or more times.

LIST I

A. Immunity from Double Jeopardy

B. Writ of Habeas Corpus

C. Due Process of Law

D. Ex Post Facto Law

E. Bill of Attainder

F. Freedom of Assembly

G. Popular Sovereignty

H. Separation of Church and State

I. Suffrage

J. Bill of Rights

LIST II

_____ 1. The right to vote for representatives in government.

_____ 2. A law that makes a crime an act that was legal when it was committed.

_____ 3. According to Article I, Section 9, of the U.S. Constitution, this privilege of citizens may be suspended during a national crisis, such as an invasion or rebellion.

_____ 4. Final authority for the government comes from those who are governed.

_____ 5. The guarantee in the 5th Amendment that a person who has been tried once may not be tried again for the same crime.

_____ 6. Each person accused of a crime is supposed to be treated equally according to established legal procedures.

_____ 7. A law declaring a person, without a trial, to be guilty of a crime.

_____ 8. Amendments to the Constitution which limit the power of the federal government to deprive citizens of certain liberties and opportunities.

_____ 9. A court order that requires an official, who has arrested a person, to bring the prisoner to court and show cause for detaining the person.

_____10. The civil liberty that provides people with the right to organize into political parties or interest groups for the purpose of influencing the government.

_____11. The government may not pass a law to establish one official religion for the United States.

_____12. These liberties and opportunities can be used to limit the powers of state governments through the "due process" clause of the 14th Amendment.

_____13. The Constitution can be amended by representatives of the people, who express the wishes of a majority of the people.

_____14. A civil liberty that prevents the arresting and jailing of a person without sufficient evidence that the person may have committed a crime.

_____15. Amendments 15, 19, and 26 prohibit the government from denying this right to certain groups of citizens.

LESSON PLAN AND NOTES FOR TEACHERS

III-15. Key Terms for Understanding Civil Liberties and Rights

Preview of Main Points

The purpose of this lesson is to help students build a basic vocabulary that may help them to understand the Constitution. The key words in this lesson pertain to civil liberties and rights. This lesson provides practice in the use of words associated with civil liberties and rights.

Connection to Textbooks

The words in this lesson are related to discussions of civil liberties and rights found in American government and history textbooks. Practice in using these words may help students to read certain parts of their textbook more effectively.

Objectives

Students are expected to:

1. demonstrate comprehension of key words about civil liberties and rights by completing the matching exercise in this lesson;
2. discuss the key words so as to demonstrate knowledge of civil liberties and rights.

Suggestions for Teaching the Lesson

Opening the Lesson

- Tell students that the point of the lesson is to provide practice in using key words about civil liberties and rights.
- Remind students of the value of learning key words about aspects of the Constitution. This enables them to communicate better with one another about a topic of importance to every citizen.

Developing the Lesson

- Distribute the worksheet with the matching exercise.
- Have students work individually or in small groups to complete the worksheet.
- Tell students that they might use the glossary in their textbook, or other pertinent reference material, to help them complete the lesson.

Concluding the Lesson

- Check answers by asking students to report their responses to the matching exercise.
- Ask students to elaborate upon their responses by explaining, in their own words, the meaning of particular key words of this lesson. Students also might be asked to supply their own examples of certain words or to tell how a particular term may pertain to the concerns of citizens.

Answers to Matching Exercise

1. I
2. D
3. B
4. G
5. A
6. C
7. E
8. J
9. B
10. F
11. H
12. J
13. G
14. B
15. I

CHAPTER IV

AMENDING AND INTERPRETING THE CONSTITUTION

Overview for Teachers

This chapter includes 15 lessons, which treat formal and informal means of constitutional change. Major constitutional principles have been shaped and modified through formal amendment, judicial interpretation, and precedents established by the executive and legislative branches of government. Thus, the Constitution in practice has been dynamic and fluid within a certain framework, as anticipated by the framers. James Madison, for example, said, "In framing a system which we wish to last for ages, we should not lose sight of the changes which ages will produce."*

George Washington also acknowledged the need for continual appraisal of our Constitution. He wrote that "the warmest friends and the best supporters the Constitution has do not contend that it is free from imperfections...." He called upon Americans of his day and subsequent generations to decide "on the alterations and amendments which are necessary.... I do not think we are more inspired, have more wisdom, or possess more virtue than those who will come after us."**

Constitutional interpretation and change began with the first meeting of Congress and has continued ever since that time. The lessons in this chapter provide examples of citizens coping with constitutional issues in the form of proposed amendments and decisions by the executive, congressional and judicial branches of government.

Lessons IV-1 to IV-4 pertain to the formal process of amending the Constitution. Lessons IV-5 to IV-15 pertain to constitutional change through interpretation and precedents.

These lessons are not designed as a comprehensive treatment of constitutional change in the United States. They should be used as supplements to high school textbooks in American government and history. It is assumed that high school textbooks and courses will provide appropriate contexts for the use of these lessons.

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*Quoted in Edwin C. Rozwenc and Frederick E. Bauer, Jr., Liberty and Power in the Making of the Constitution (Boston: D. C. Heath and Company, 1963), p. 6.

**Quoted in Saul K. Padover, The Living U.S. Constitution (New York: The New American Library, A Mentor Book, 1953), p. 20.

List of Lessons in Chapter IV

IV- 1. Purposes of Amendments

IV- 2. Passage of the Twenty-Sixth Amendment

IV- 3. The Equal Rights Amendment: You Decide

IV- 4. A New Constitutional Convention: Another Way to Amend the Constitution

IV- 5. The Origin of Political Parties

IV- 6. The Supremacy of Federal Law: Washington's Decision to Put Down the Whiskey Rebellion

IV- 7. Stretching the Constitution: Jefferson's Decision to Purchase Louisiana

IV- 8. The Court and Development of the Commerce Power

IV- 9. Two Responses to a Constitutional Crisis: Decisions of Buchanan and Lincoln About Secession

IV-10. Pathway to Judgment: *Near v. Minnesota*

IV-11. Overruling Precedent: The Flag Salute Cases

IV-12. The Court's Use of Dissent

IV-13. Constitutional Rights in a Time of Crisis, 1941-1945

IV-14. The Limits of Presidential Power: Truman's Decision to Seize the Steel Mills

IV-15. You Be the Judge: The Case of *Camara v. Municipal Court of San Francisco*, 1967

IV-1. PURPOSES OF AMENDMENTS

Our Constitution has been amended 26 times since 1791. The Bill of Rights makes up the first ten amendments, which were ratified in 1791. These amendments (1-10) describe our basic rights and liberties.

What about the other sixteen Amendments? What purposes do Amendments 11 through 26 serve?

We can group the remaining sixteen Amendments into the categories explained below. These categories show four different ways Amendments 11 through 26 have shaped the powers of government and our political life.

Purposes Served by the Amendments

The sixteen Amendments passed after the Bill of Rights serve four major purposes. First, several Amendments add to or subtract from the national government's power. The 11th and 13th Amendments are good examples. The 11th Amendment (added to the Constitution in 1798) says the federal courts have no power to hear lawsuits brought by private citizens against a state government. This amendment was a reaction to a case in 1793 in which two South Carolina citizens had taken the state of Georgia into federal court. The South Carolina citizens were suing Georgia on behalf of a British creditor whose property was taken away by Georgia. The 11th Amendment was passed to make sure this would never happen again.

The 13th Amendment (1865) abolished slavery and gave Congress the power to legislate against slavery. The Amendment says, "Congress shall have the power to enforce this article by appropriate legislation."

Second, some Amendments limit the power of state governments. The 13th Amendment also served this purpose when it abolished slavery.

The 14th Amendment (1868) limits the powers and actions of state governments. That Amendment says that no state "shall deprive any person of life, liberty or property, without due process of law" nor deny anyone "the equal protection of the laws."

Since the 1920's the Supreme Court has used the "due process" clause to apply many protections of the Bill of Rights to state governments. For example, in 1925 the Court ruled that the "due process" clause meant state governments could not interfere with a person's First Amendment rights to free speech.

Since the 1940's the Court has used the "equal protection" clause to prohibit discrimination by state governments against blacks and others. For instance, the "equal protection" clause was the basis of a landmark 1954 Court decision that outlawed racial segregation in public schools.

Third, some Amendments expand the right to vote and give voters greater power. Several Amendments have served this purpose. For example, the 17th Amendment (1913) gives to voters in each state the right to elect their U.S. senators. Until this Amendment senators were elected by state legislatures.

Fourth, some Amendments change the structure of our governmental machinery. The 12th Amendment (1804), for example, changed the rules of the electoral college system for electing the President and Vice-President. It provides that presidential electors vote separately for President and Vice-President.

Reviewing and Using the Four Statements About Purposes of Amendments

There are four purposes of Amendments 11-26 of the U.S. Constitution. These purposes are discussed in the preceding pages. These statements are as follows:

1. Several Amendments add to or subtract from the national government's power.
2. Some Amendments limit the power of state governments.
3. Some Amendments expand the right to vote and give voters greater power.
4. Some Amendments change the structure of our governmental machinery.

These four statements of purposes can be used to organize and interpret Amendments 11-26. Complete the following tasks, which require review and use of the four statements about purposes of Amendments.

1. Find Amendments 11-26 in a copy of the U.S. Constitution.
2. Read each Amendment.
3. Which of the four purposes is served by each of the Amendments? Use the Student Worksheet on the following page to help you answer this question.
4. In your opinion, which purpose is most important? Which one is least important? Explain.

STUDENT WORKSHEET

Four Purposes Served By Amendments Eleven Through Twenty-Six

1. Amendments that add to or subtract from the national government's power.

	Amendment		Content
a.	11th	a.	Deprived federal courts of jurisdiction in lawsuits against states.
b.	13th	b.	Abolished slavery. Said Congress could legislate against slavery.
c.	______	c.	______ ______
d.	______	d.	______ ______
e.	______	e.	______ ______
f.	______	f.	______ ______

2. Amendments that limit the power of state governments.

	Amendment		Content
a.	______	a.	______ ______
b.	______	b.	______ ______
c.	______	c.	______ ______
d.	______	d.	______ ______
e.	______	e.	______ ______
f.	______	f.	______ ______

STUDENT WORKSHEET (Continued)

Four Purposes Served By Amendments Eleven Through Twenty-Six

3. Amendments that expand the right to vote and give voters greater power.

Amendment	Content
a. ______	a. ______________________________
b. ______	b. ______________________________
c. ______	c. ______________________________
d. ______	d. ______________________________
e. ______	e. ______________________________
f. ______	f. ______________________________

4. Amendments that change the structure of our governmental machinery.

Amendment	Content
a. ______	a. ______________________________
b. ______	b. ______________________________
c. ______	c. ______________________________
d. ______	d. ______________________________
e. ______	e. ______________________________
f. ______	f. ______________________________

LESSON PLAN AND NOTES FOR TEACHERS

IV-1. Purposes of Amendments

Preview of Main Points

Several political scientists have developed a useful set of categories for understanding the purposes served by Amendments 11 through 26. The categories used here are based on James MacGregor Burns, J. W. Peltason and Thomas E. Cronin, Government by the People, 11th edition (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1981), pp. 44-45. This lesson presents a version of these categories to students and gives them the opportunity to use the categories to group Amendments. A main purpose is to help students more fully understand the contribution of Amendments 11 through 26 to American political life.

Connection to Textbooks

This lesson can enrich brief descriptions of the formal Amendment process or listings of Amendments found in standard texts. It gives students a framework for seeing how the Amendment process has, in effect, been used.

Objectives

Students are expected to:

1. classify Amendments 11 through 26 in terms of four categories;
2. deepen their knowledge of the content of Amendments 11 through 26;
3. learn the four major purposes served by Amendments 11 through 26.

Suggestions For Teaching The Lesson

This lesson provides an in-depth look at Amendments 11 through 26. It can also help students develop skills in comprehending and classifying information.

Opening The Lesson

- Tell students Chief Justice John Marshall once said that the Constitution was "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs."

- Remind students that one way the Constitution has been "adapted to...human affairs" is through formal amendment. Note that beyond the Bill of Rights the Constitution has been amended 16 times.

  You might note that two Amendments -- the 18th and 21st -- canceled each other out by first establishing and then repealing Prohibition.

- Point out that the 16 Amendments beyond the Bill of Rights serve a variety of purposes. Explain that this lesson will help students better understand these purposes.

Developing The Lesson

- Have students read the material describing the four categories for classifying Amendments. Discuss these categories with the class to insure students' understanding.

- Instruct students to find Amendments 11 through 26 in the Constitution. Have students read each Amendment and place it under the appropriate purpose on the student worksheet. As the example under purpose 1 shows, students should list both the Amendment and its content. Students could work individually or in groups.

- Provide "feedback" about answers. Use the answer sheet on the next page as a guide to discussion of answers with students.

  Note: There can be more than one correct answer here. It is possible for students to reasonably differ in some of their classifications of Amendments in terms of the four categories provided in this lesson. For example, one might include Amendments 19, 24 and 26 in category 2. Certainly, these three Amendments also fit in category 3. Students should be able to justify their categorizations.

Concluding The Lesson

- Discuss student responses. These questions might prompt discussion:

  1. Which purpose has the greatest number of Amendments listed?

  2. Which purpose do you think is more important? Which purpose is least important? Give reasons for your answers.

ANSWER SHEET

Four Purposes Served by Amendments Eleven Through Twenty-Six

1. Amendments that add to or subtract from the national government's power.

Amendment	Content
11th	Deprived federal courts of jurisdiction in lawsuits against states.
13th	Abolished slavery. Said Congress could legislate against slavery.
16th	Gave Congress power to levy an income tax.
18th	Gave Congress power to prohibit making, selling or transporting alcoholic beverages.
21th	Repealed the 18th and gave states power to regulate liquor.

Note: Students might correctly include Amendments 14 and 15 in category 1. Section 5 of the 14th Amendment and Section 2 of the 15th Amendment add to the national government's power by granting to Congress the power to enforce the provisions of those Amendments.

2. Amendments that limit the power of state governments.

Amendment	Content
13th	Took away states' power to permit slavery.
14th	Limited state government powers to interfere with civil rights.
15th	Barred states from denying any citizen the right to vote because of race, color or previous condition of servitude.

Note: Students might correctly include Amendments 19, 24 and 26 in category 2. Amendments 19 and 26 deprived the states (and the national government) from denying the right to vote to certain groups of people. Amendment 24 stops any state government from imposing a tax as a prerequisite to voting.

ANSWER SHEET (Continued)

3. Amendments that expand the right to vote and give voters greater power.

Amendment:	Content
15th	Extended suffrage to black males.
17th	Gave voters in each state right to elect their senators directly.
19th	Extended suffrage to women.
23rd	Gave District of Columbia voters the right to vote for President and Vice-President.
24th	Forbids any state to impose a tax on the right to vote (a poll tax).
26th	Extended suffrage to those eighteen years of age.

4. Amendments that change the structure of our governmental machinery.

Amendment:	Content
12th	Corrected problems in method of electing President and Vice-President.
20th	Changed the calendar for Congressional sessions and the time between when Presidents are elected and when they take office.
22nd	Limits a President to a maximum of two elected terms.
25th	Provides procedures to fill vacancies in the Vice-Presidency, and to determine if and when Presidents are unable to carry out their duties.

IV-2. PASSAGE OF THE TWENTY-SIXTH AMENDMENT

Chuck Hermann was both nervous and proud as he approached the polling place. He was about to vote for the first time in his life. "Thank heavens the line isn't too long," he thought. Chuck had allowed just enough time to vote before going to his first period class at Winchester High School.

As he entered the voting booth, Chuck was concentrating on how to work the voting machine. He did not give a thought to the fact that his parents could not have voted when they were 18. How did Chuck and millions of teenagers like him gain the right to vote?

The voting age in the United States was lowered from 21 to 18 by the 26th Amendment to the Constitution. Formal amendment is one important way our Constitution has been changed and kept up to date over time. This lesson presents the story of the 26th Amendment.

The Right to Vote

All societies that choose public officials through elections must answer the question; who shall be allowed to vote? During much of our history various laws denied the right to vote to these groups: propertyless men, black people, Indians, poor people, women, illiterates and teenagers. An important part of the American heritage has been the gradual expansion of the right to vote.

Women, for example, were generally considered unfit to vote until the 20th Century. Before 1900 only four Western states allowed women to vote. However, in 1920 the passage of the 19th Amendment guaranteed the voting rights of women.

Age Limits on Voting. In the United States 21 has been traditionally considered the age when one legally becomes an adult. This custom came to America with English settlers during the Colonial period. In keeping with this tradition, 21 became the minimum voting age in each part of the United States.

Changes in this tradition came slowly. It was not until 1943 that the first state, Georgia, lowered the voting age from 21 to 18. In 1955 Kentucky did the same thing. Then in 1959 Alaska set the voting age at 19 and Hawaii at 20. Despite efforts in the 1950's and 1960's to get other states to lower the voting age no other states did so.

Public Attitudes Toward the 18-Year-Old Vote

What did the public think about teenagers voting? Up until World War II (1939-1945) suggestions to lower the voting were usually met with strong popular disapproval. However, Table 1 clearly shows that starting with World War II the public's attitude began to change.

World War II meant that millions of young Americans were drafted to serve in the military. Many, while considered old enough to fight and die for their country, were still considered too young to vote. Polls during the war indicated a great shift in opinion toward the lowering of the voting age. In the midst of the biggest war in America's history, a majority of the public began to favor lowering the voting age.

The draft of young Americans ended with the conclusion of the war. Interest in lowering the voting age seemed to fade. When the draft was resumed in the late 1940's there was no strong pressure for a reduction in the voting age. Although when asked, a majority of Americans still favored a reduction during the '50's and early '60's.

A Controversy Arises. During the late 1960's a public debate began over whether to lower the voting age to 18. In part the debate stemmed from the growing involvement of many young people in the political issues of the day. To many observers young people seemed to be in the forefront of those seeking changes in traditional ways of doing things in such areas as race relations, student rights, environmental protection and women's rights.

By the late 1960's the single most important policy issue was the nation's growing military involvement in Viet Nam. Hundreds of thousands of young men, some too young to vote, were going to fight and possibly die in Southeast Asia. Many citizens felt this war was a mistake by our government. Others supported the conduct of the war.

As the 1960's were drawing to a close many young people were participating in anti-war rallies and demonstrations. Some observers argued that the young, unable to vote, had no other legitimate means of voicing their concerns about government policies. Others responded that lowering the voting age was not the answer to the nation's problems and was unnecessary. The debate might still be going on had not Congress, the Supreme Court and an upcoming presidential election come into the picture in 1970.

Congress and the Supreme Court Act

In 1970 Congress passed the Voting Rights Act. This law lowered the voting age throughout the country for national, state and local elections. Members of the Democratic party in Congress had strongly supported the bill. They anticipated that a large number of younger voters would vote for Democratic candidates in the 1972 elections. President Richard Nixon, a Republican, would be up for re-election. A major campaign issue would be Nixon's conduct of the Vietnam War.

The President objected to the Voting Rights bill but signed it into law. Nixon claimed he favored lowering the voting age. However, the President said he believed, "that Congress has no power to enact it by simple statute, but rather it requires a constitutional amendment."

The Supreme Court's Role. As soon as the law was passed Nixon ordered the Justice Department to bring a court suit to test its constitutionality. The test case was known as *Oregon v. Mitchell* (1970). The Supreme Court agreed to hear the case just six months after Nixon signed the Voting Rights bill into law.

In December 1970 the Court ruled by a 5 to 4 vote that Congress had the constitutional power to lower the voting age for national but not for state and local elections. The 26th Amendment would soon result from this decision.

Impact of the Decision. The Court's decision caused great problems for the 47 states that did not allow 18 year olds to vote. It meant state election officials would have to prepare two sets of ballots, registration books and voting machines--one for national elections and one for state elections. State officials warned that they could never get a dual system set up in time for the 1972 election.

The 26th Amendment

In early 1971, with the election drawing ever closer, Congress again acted. In March of 1971 both houses of Congress approved a proposed Constitutional amendment lowering the voting age to 18 in all elections.

The proposed amendment was immediately sent to the states for ratification (approval). Like Congress the states acted in record time so the amendment could take effect for the 1972 Presidential election. By July 1, 1971 the required 3/4's of the state legislatures had ratified the amendment. Just three months and seven days after it was sent to them the states added the 26th Amendment to the Constitution. Chuck Hermann and nearly eleven million other young people had gained the right to vote.

Reviewing Facts and Main Ideas

1. How did 21 become the minimum voting age in the United States?

2. Why did the voting age become a matter of public debate in the 1960's?

3. What were the terms of the 1970 Voting Rights Act?

4. What position did President Nixon take on the Act?

5. Why had Democrats in Congress strongly supported the Act?

6. What was the Supreme Court's decision in Oregon v. Mitchell?

Interpreting Evidence

Use information in Table 1 (page 317) to answer the following questions:

1. Describe in a short paragraph the kind of information displayed in Table 1.

2. In what year did a majority of Americans first favor lowering the voting age?

3. In which years did a majority of Americans oppose lowering the voting age?

4. What reason might explain the decline in support for lowering the voting age shown in 1946?

5. Would the information in the Table support this statement?

   Statement: Support for lowering the voting age has consistently increased since the end of World War II.

   Yes ______ No ______ Give reasons for your answer.

TABLE 1

American Attitudes Toward Lowering The Voting Age
(From Gallup Polls)

	Favor	Oppose	No Opinion
1939 - May 18	17%	79%	4%
1943 - Aug 17	52	42	6
1946 - Apr 10	44	52	4
1951 - Sep 21	47	49	4
1953 - Jul 4	63	31	6
1965 - Aug 25	57	39	4
1968 - Sep 22	66	31	3
1970 - Mar	56	40	4

Source: Erskine, Hazel. "The Polls: The Politics of Age" Public Opinion Quarterly, Volume 35, No. 3, Fall, 1971, Pages 482-495.

LESSON PLAN AND NOTES FOR TEACHERS

IV-2. Passage of the Twenty-Sixth Amendment

Preview of Main Points

This lesson is a case study of the history of the 26th Amendment. The lesson describes the role of Congress, the President and the Supreme Court in events leading to passage of the Amendment. Information from Gallup polls is used to describe the shifting pattern of public attitudes toward the 18-year-old vote.

Connection to Textbooks

This lesson may be used to enrich history and government textbook descriptions of the formal process used to amend the Constitution. The lesson could also supplement government textbook discussion of the expansion of voting rights. Further, the lesson could supplement history textbook discussions of the Vietname era.

Objectives

Students are expected to:

1. tell how through the nation's history different groups have won the right to vote;
2. explain the origin of the 21-year-old voting requirement in the United States;
3. use evidence in a table to draw conclusions about public attitudes toward lowering the voting age to 18;
4. explain the role of Congress, the President and the Supreme Court in events leading to passage of the 26th Amendment;
5. develop some awareness of the political dynamics involved in the formal amendment process.

Suggestions for Teaching the Lesson

Opening the Lesson

- Remind students that while 18 is now the minimum voting age, it was higher until fairly recently.

- Preview the lesson for students by explaining its purpose and how it is linked to the material they are studying.

Developing the Lesson

- Have students read the case study. Conduct a discussion of the questions in "Reviewing Facts and Main Ideas" to insure students have understood these main ideas.

- Have students examine Table 1 and answer the questions under "Interpreting Evidence."

  Note: You might make a transparency of Table 1 and use it as an aid to class discussion.

Concluding the Lesson

- Ask students to rank three factors from "most" to "least" in terms of their importance to the passage of the 26th Amendment. The factors are: (1) the Supreme Court's decision in Oregon v. Mitchell, (2) Congress's passage of the 1970 Voting Rights Act and (3) the upcoming 1972 Presidential election. Have students give reasons for their ranking.

  Note: There is no correct answer here. The object is to give students an opportunity to apply what they have learned by using information from the case-study to defend their rankings.

Suggested Reading

An excellent resource for teachers with many teaching suggestions is: Patrick, John J., and Glenn, Allen D. The Young Voter: A Guide to Instruction About Voter Behavior and Elections. National Council for the Social Studies, Washington, D.C., 1972.

IV-3. THE EQUAL RIGHTS AMENDMENT: YOU DECIDE

On June 30, 1982, time ran out on a ten-year struggle over ratification of the Equal Rights Amendment, known as the ERA. Only 35 states had approved the ERA by the ratification deadline set by Congress. This was three short of the 38 required by the Constitution for ratification of an amendment.

When the deadline passed, ERA opponents claimed a great victory. "We won," said Phyllis Schlafly, a long-time foe of the Amendment, "and really it wasn't even close." ERA supporters, however, vowed to fight on.

Just six months later, the ERA came back onto the national stage. In January 1983, on the first day of the 98th Congress, the ERA was reintroduced in the House with support of more than half of its members. Headlines proclaimed: "New ERA Battle Lies Ahead."

Reintroduction meant the ERA was started again on the road toward ratification. The next steps would be passing both House and Senate by a two-thirds vote and then gaining approval from three-fourths of the states.

Where do you stand on the ERA? Is the ERA needed? Is it a good way to improve the legal status of women? In this lesson you will evaluate the ERA by:

(1) examining the text of the Amendment;

(2) considering arguments for and against the ERA, and

(3) writing a letter supporting or opposing the Amendment.

The Equal Rights Amendment

The ERA had been introduced in the House of Representatives in every year since 1923. Finally, in 1972 both Houses of Congress approved and sent the proposed Amendment to the states for ratification. The text of today's Amendment varies only slightly from the one first introduced in 1923. The Amendment states:

> Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
>
> Section 2. The Congress shall have power to enforce by appropriate legislation the provisions of the Article.

Section 3. This amendment shall take affect two years after the date of ratification.

On the face of it the ERA seems clear enough. The Amendment seeks to use the Constitution to eliminate sex as a factor in determining the legal rights of women and men. In other words, the ERA requires that federal or state governments treat each person, male or female, as a citizen and individual without regard to their sex, male or female.

Like many amendments, however, the ERA is only a general statement of principle. Constitutional scholars as well as ordinary citizens agree over how this principle is likely to be applied in specific areas such as the military service or the schools. As a result, there are many possible interpretations of how the ERA would affect daily life and the role of women in American society.

Would passage of ERA require "coed" football in high school or combat duty for women serving in the Army? Would the ERA nullify state laws designed to protect women (such as those limiting the numbers of hours women could work)? Or, by nullifying such laws, would the ERA open up long-deprived economic benefits, such as overtime pay?

What Might ERA Do? Pro and Con

When Congress sent the ERA to the States for ratification in 1972, the Amendment was greeted with an initial burst of support. Within a year 30 states had given their approval, often with little or no debate. Then strong opposition developed along with a stormy debate over the ERA, which continues today. This debate centers largely on the possible consequences of the Amendment for specific areas of American life. Here are some of the main arguments that have been presented by both sides in the struggle over ratification. As you examine each argument, ask:

(1) Does the argument seem reasonable or valid? (If not, you may have grounds for rejecting it.)

(2) How might the projected consequences affect me and others I know? (If the ERA became part of the Constitution, how would I be affected? How would this affect others?)

(3) Do I value the likely consequences? (Do I want them to occur or do I want to avoid them? You may reject a seemingly reasonable or valid argument because you do not like the consequences it would produce--you do not value them.)

The Role and Identity of Women

PRO: Supporters argue ERA simply insures women the constitutionally guaranteed right to be able to choose or compete on an equal basis for whatever roles they wish to assume. Thus, the ERA does not promote nor will it lead to a "social revolution" or to women becoming like men. In sixteen states which have ERA's in their own state constitution nothing of the sort has occurred. Rather, the ERA will nullify federal and state laws that discriminate against women in jobs, business, marriage and other areas. Further the ERA would end the practice of placing sexual distinctions in new laws and regulations.

CON: Opponents argue that the ERA is an unrealistic effort to convert men and women into identical legal beings with exactly the same rights and responsibilities at all times and under all circumstances. In fact, God made men and women different. Men have the capacity to beget children and women to bear them. The ERA would undermine the woman's natural role as mother of helpless infants who require many years of care before they can grow into competent adults. The ERA devalues this role, which God meant to be performed by women. Thus, the ERA would seriously weaken the concept of the woman as homemaker receiving special protection under the law.

Marriage, Divorce and Family Life

PRO: The ERA would promote equality for men and women in the legal aspects of marriage. The ERA would determine ownership of property on the basis of the value of each spouse's contribution to its acquisition. This would give real dignity to the roles of mother and housewife.

The ERA would mean both spouses would have the same legal rights and responsibilities. However, this would not mean both spouses could be required to contribute 50% of the marital expenses. It would mean that either spouse could be held liable for the support of the other based on individual ability to pay.

At present, state laws calling for a husband to support his wife specify no more than the duty to provide "necessaries." Such laws usually let the husband, not the wife, decide what constitutes "necessaries" of food and shelter. It is the husband's decision if he never allows her more than one dress or to have a set of dishes. As long as a woman lives under his roof she has little legal redress.

The ERA would not require any wife to go out to work for a living. That is a private decision between husband and wife. Many women already work because their income is needed to help support the family. Just because they work does not mean that they neglect their children. Nor is it true that total responsibility for child care lies with the mother.

The ERA would not interfere with such private matters. No law can control which spouse really rules the house and makes such major decisions. No law can make people treat each other with love and respect.

Should divorce occur, the ERA would not allow husbands to leave their wives without support. However, it would require alimony be granted to men as well as women. It could also hold both the mother and father legally responsible for support of their children.

Some men support ERA because they are discriminated against in divorce proceedings. In many states, divorced men are required to pay alimony even if the wife makes a substantial salary or remarries. In short, the Amendment would simply require equality in such matters.

Finally, the ERA could end certain types of discrimination against homosexuals because of their sexual preferences. However, in states with ERA's no one has interpreted the law as permitting homosexual marriages unless such marriages had already been approved through other state laws.

CON: Opponents argue the ERA would threaten the institution of the family--a basic Judeo-Christian institution. Women could lose their right not to work. They could lose the freedom to make homemaking or motherhood their primary job.

By changing the laws pertaining to the family, the ERA could allow men to refuse to provide for their wives and children, claiming their "equal rights." While present laws are not perfect, they do protect wives and families. Under the ERA, a mother could be held equally responsible for the support of children and thus be forced to leave her home and go to work.

Traditional values correctly impose on husbands and fathers primary responsibility for supporting their wives and children. The task of providing nurture to children is the responsibility of the housewife and mother. By requiring women to work, the ERA could wipe out these basic values and roles regarding the family.

The ERA represents an attack on the sanctity of the home. It would give the federal government license to interfere in the private decisions of the family. It would undermine the traditional and important concept of the man as head of the household.

As for divorce, women could lose their claims to alimony and child support. The obligation of a man to support his former wife and children is not sex equal because there are obvious factual differences between men and women. Women have babies (and men do not) and women do not have the same physical strength as men. The ERA would not allow the law to take such differences into account when settling family legal questions such as divorce.

Finally, under the ERA the states would not deny a marriage license to two homosexuals. The ERA would thus allow homosexuals to marry and thereby to enjoy the same benefits (such as tax benefits) enjoyed by normal married couples. Indeed, married homosexuals could even have a legal right to adopt children.

Education and Sports

PRO: The ERA will require that all state schools (elementary through college) eliminate regulations or official practices which exclude women or limit their numbers. Thus, state schools or colleges currently limited to one sex would have to allow both sexes to attend. Exployment and promotion in public schools would have to be free from sex discrimination.

The ERA, however, would not require quotas for men and women in schools. Nor would it require that school populations accurately reflect the sex distribution in the population. It would guarantee, however, that admission to school would depend on ability or other relevant characteristics not on a person's sex. Similarly, scholarship funds could not be distributed on the basis of sex, male or female.

As for sports, the ERA would constitutionally guarantee equality of funding in school sports programs. At present, such equality is only guaranteed by an act of Congress which could be changed by new legislation or even a court ruling.

The ERA would not require coeducational contact sports. However, it would encourage participation in athletics by girls and it would ensure girls would benefit from equal training and equipment to that provided for boys.

CON: The ERA is unnecessary to assure fair treatment of boys and girls in education and sports. Federal laws already provide such guarantees. The Education Amendments of 1972, for example, already give women full equal rights in education at every level.

The ERA will require every aspect of our school system to be fully coed, whether parents and students want it to be or not. Private schools and colleges will be required to be fully coed thus denying students freedom of choice to attend an all-girls' or all boys' school.

All sports, including contact sports, would have to become coeducational for both practice and competition. This policy would fail to recognize that because of physical differences girls cannot compete on an equal basis with boys in most sports.

The Draft and Military Service

PRO: The ERA will allow women to volunteer for military service on the same basis as men. At present, for instance, a man can enlist without a high school degree while a woman must have such a degree. This would open up the military service and its benefits equally to women who in the past have often been arbitrarily barred from military service. Such benefits include technical training, GI bills, loans and life insurance.

The ERA will require Congress to treat men and women equally with respect to the draft. Thus, both men and women would be subject to the draft. Congress could, however, create legitimate sex-neutral exemptions from the draft. For example, Congress could exempt all parents (male or female) of children under 18 from the draft. Thus, young mothers would not be required to serve.

Once in the service, women like men, could be assigned to various duties which might include combat. In 1978 the Pentagon asked to be able to assign women to combat zones and duty. Many military leaders believe women are capable of being integrated into combat units without experiencing problems. In 1980, more than half of the first women graduates of the U.S. Military Academy at West Point asked to be assigned to combat branches.

Supporters of ERA argue most patriotic American women are willing to serve their country in the military. Since the days of the American Revolution many women have served in combat zones in other capacities such as nurses.

CON: The ERA would allow no military exemptions on the basis of sex. Thus, the ERA would take away a young woman's draft exemption and force women to register for the draft just like men. The Selective Service Act would read "all persons" rather than "all male citizens."

The ERA would also require women to serve in combat. Present federal laws exempting women from combat would become unconstitutional. It is not progress for the ERA to make our young girls subject to military induction and combat duty in all our country's future wars.

Use of Public Facilities

PRO: Passage of the ERA would not require coed bathing and toilet facilities in public places. Nor would it require coed sleeping quarters in colleges, prisons or military barracks. None of the 16 states with ERA's has required coed restrooms or other such facilities.

CON: Opponents of ERA claim passage could make all public bathing facilities and restrooms available to both sexes. Coed facilities would follow naturally from ERA's effort to "neuterize" all aspects of social life.

Discrimination in Employment

PRO: Many states have laws restricting or limiting the occupations or working conditions of women, but not of men. These so-called "protective" laws have in practice discriminated against women by making it difficult and sometimes impossible for a qualified woman to obtain certain, often very good jobs. Many of the abuses under these laws have been ended because of Title VII of the Civil Rights Act of 1964; however, other restrictions continue. Some states, for instance, still have laws limiting the hours women may work. Such laws may prevent women from gaining promotions to supervisory positions.

Even where state and federal laws have eliminated sex discrimination, laws can be changed. A law passed by one legislature can be undone by another. The ERA would constitutionally and permanently guarantee equal treatment of women in the labor laws of all states.

CON: Recent federal laws and regulations have largely ended discrimination against women in public and private employment. In addition, the states have both repealed their laws discriminating against women in major respects and passed new laws to end discrimination.

In addition, the Supreme Court has interpreted the Due Process clause in the 5th Amendment and the Due Process and Equal Protection Clause of the 14th Amendment as prohibiting legal discriminations against women. The ERA simply is not necessary.

States Rights and Federal Control

PRO: The ERA is not a federal power grab. It would not change the independence or authority of state governments to make laws suited to their own state except to require that such laws apply equally to men and women. For example, one state could set the minimum age for marriage at 16, another at 18, just as they do now. ERA would only require that in each state the minimum age be the same for men and women.

The ERA gives the national government no additional power. The ERA simply recognizes that sex discrimination is a federal issue affecting everyone in the nation. It also recognizes that many states might still have laws discriminating against blacks and others if the federal government had not acted in the past. For example, without the 19th Amendment it is doubtful whether many states would have given women the right to vote.

CON: The ERA would transfer from the states to the national government vast powers which have been reserved to the states by the Constitution. Chief among these is the power to make laws governing the relationship of men and women in such areas as marriage, property rights, child care, divorce and the like. Traditionally, each state has made such laws to conform with the belief and customs of most of its residents. The ERA would impose federal standards over state discretion in such matters.

Section 2 of the ERA gives Congress the powers to enforce the Amendment. This means the executive branch of the national government will administer ERA related laws passed by Congress and the federal courts will adjudicate such laws. The power to pass, execute and interpret laws dealing with the relationship of men and women has always been with the states. Section 2 would give the federal government control over the last remaining aspects of our life that have remained beyond federal regulation. In so doing it would reduce the states in our constitutional system to meaningless zeroes on the nation's map.

Reviewing Facts and Main Ideas

1. When was an Equal Rights Amendment first introduced into Congress?

2. How many states had approved the ERA by the 1982 Congressional deadline? How many states were needed for approval?

3. Indicate whether each statement below is true or false. If you make a statement false, rewrite or correct it so that it is true.

   _____ a. The ERA is a general statement of principle.

   _____ b. Section 2 of the ERA gives the President power to enforce the Amendment.

   _____ c. The ERA seeks to eliminate sex as a factor in determining the legal rights of men and women.

   _____ d. The ERA ratification debate focused largely on the Supreme Court's duties regarding the Amendment.

Evaluating and Applying the Arguments

1. In which three or four areas did you find the most reasonable arguments for or against ratification of the ERA?

   (1) Role and Identity of Women

   (2) Marriage, Divorce and Family Life

   (3) Education and Sports

   (4) The Draft and Military Service

   (5) Use of Public Facilities

   (6) States Rights and Federal Control

2. In which areas did you find the least reasonable arguments for or against ERA?

3. Are there any other arguments for or against the ERA you might add to those presented? Explain.

4. What is your judgment of the ERA? Is it a good vehicle for improving the legal status of women?

5. Prepare a letter for your member of Congress or state lawmaker supporting or opposing the ERA. In your letter explain your reasons for or against the Amendment.

LESSON PLAN AND NOTES FOR TEACHERS

IV-3. The Equal Rights Amendment: You Decide

Preview of Main Points

This lesson presents the text of the Equal Rights Amendment, and pro and con arguments regarding the ERA's impact on six areas of American life: the role and identity of women; marriage, divorce and family life; education and sports; the draft and military service; use of public facilities; states' rights and federal control.

Connection to Textbooks

This lesson illustrates how political controversy can surround the formal procedures to amend the Constitution. The lesson could enrich American government textbook discussions of the politics of the ERA ratification struggle of the 1970's as well as discussions of civil rights and liberties. It can be used with American history textbook discussions of efforts in our history to increase the political power of women.

Objectives

Students are expected to:

1. know the text and major purpose of the ERA;
2. understand why there could be multiple interpretations of meaning of the ERA for daily life;
3. consider and evaluate pro and con arguments regarding the potential impact of the ERA;
4. take a position in support of or in opposition to the ERA;
5. write a letter using relevant arguments from the lesson urging their state lawmaker or member of Congress to support or oppose the ERA.

Suggestions For Teaching The Lesson

Opening The Lesson

- Preview the main parts of the lesson for students.
- Explain how this lesson is connected to the material they are studying in the textbook.

- You might wish to inform students that the ERA illustrates that the underlying goal of the women's rights movement in the United States has consistently been to remove the matter of women's rights from the control of legislatures by embodying it in the nation's basic legal document, the Constitution itself. This strategy is premised on the recognition that if legislators enact a law, they can also repeal it.

  Thus, the ERA has been pushed for over 50 years even though many state and federal laws, especially during the 1970's, have struck down numerous barriers to legal equality for women.

Developing The Lesson

- Have students read the introduction and first section of the lesson, "The Equal Rights Amendment."

- Go over with students the text of the Amendment.

  1. Ask students which Section states the general principle embodied in the Amendment. (Section 1) What is that principle?

  2. Ask students which Section discusses enforcement. (Section 2)

  3. Ask students to speculate about the purpose served by Section 3. (Answer: A prime goal of the ERA is to nullify state laws that discriminate against women. Section 3 gives state legislatures--particularly those which meet only in alternate years--and state agencies the chance to review and revise those laws which conflict with the Amendment.)

- Have students read the main section of the lesson, "What Might ERA Do? Pro and Con."

  Depending on your class, you might let students work through the entire section or you might stop at the end of each of the six issue areas ("The Role and Identity of Women," etc.) to discuss class reactions to each area. Use the three questions at the start of the section as your discussion guide.

Concluding The Lesson

- Have students complete "Reviewing Facts and Main Ideas." Conduct a class discussion of student responses.

- Have students complete items 1 through 4 in "Evaluating and Applying the Arguments." Conduct a class discussion of student responses.
- Have students apply the pro or con arguments by preparing a letter as called for in item 5. You may wish to have students work on this task individually or in small groups.

Suggested Reading

Boles, Janet K. The Politics of the Equal Rights Amendment (New York: Longman, 1979)

This book contains an extensive discussion of strategies pursued by supporters of the ERA from 1972 to 1977.

Suggested Films

WOMEN'S RIGHTS

A high school girl wants to swim on the boys' team but is thwarted by state bylaws which prohibit her from doing so. The film shows the unconstitutionality of the bylaws based on the Fourteenth Amendment's guarantee of equal protection of the law to all citizens regardless of race or sex. BFA Educational Media, 1974, 22 minutes.

WOMEN GET THE VOTE

Using historical footage the film shows the difficult and sometimes violent course of the campaign for women's voting rights leading to Susan B. Anthony's triumph in 1919. From the TWENTIETH CENTURY series, CBS, Contemporary Films, 1962, 25 minutes, black and white.

IV-4. A NEW CONSTITUTIONAL CONVENTION: ANOTHER WAY TO AMEND THE CONSTITUTION

We have 26 Amendments to our Constitution. All 26 were proposed by a two-thirds vote of both Houses of Congress.

There is another method for proposing amendments to the Constitution--a method that has never been used. This is for Congress, upon request of the states, to call for a special constitutional convention to draw up a proposed amendment.

Article V of the Constitution spells out the rules for amending the Constitution. Article V says Congress "shall call a convention for proposing Amendments" whenever two-thirds of the states petition for it.

This unused method for proposing amendments has been called an "Article V Convention." In recent years there have been heated debates about whether an Article V Convention can and should be called.

In 1979, President Jimmy Carter called an Article V Convention "the worst imaginable route" to amending the Constitution. At the same time the National Taxpayers Union and other interest groups were pushing state legislatures to petition Congress for just such a convention.

Why the debate? What attempts have been made to convene an Article V Convention? Why have past attempts failed? How might such a convention work if it ever got started? Is one likely? This lesson addresses these questions.

Attempts to Call an Article V Convention

There have been many attempts since 1787 to hold another constitutional convention. Over the years various state legislatures have submitted more than 350 petitions to Congress. Every state in the Union has at one time or another petitioned Congress for an Article V Convention on some topic.

Two efforts that have come very close to success have both occurred in recent years. One remains a possibility.

Legislative Redistricting. The first attempt occurred during the 1960's. In 1964, the Supreme Court ruled that state legislators must be elected from districts of equal population. The ruling was very unpopular. Thirty-three state legislatures, only one short of the required two-thirds, petitioned Congress for a convention to propose an amendment that would overturn the Court's ruling.

In the late 1960's, pressure for an amendment on legislative redistricting let up. As a result, the 34th legislature required to convene an Article V Convention never acted and the campaign to call a convention died.

Balance the Budget. The most recent effort has been a campaign to call a convention proposing a constitutional amendment requiring a balanced budget. The budget is the national government's plan for spending money each year. A "balanced" budget means the government spends no more than it takes in through taxes and other sources.

With government spending increasing annually, there has been strong "grass roots" support for an amendment to force Congress to balance the national budget each year. In a 1980 national survey of high school students, for example, 62% said they favored a balanced-budget amendment. Even larger percentages of adults favored such an amendment.

By 1982, thirty-one state legislatures had approved petitions calling for an Article V Convention to draw up an amendment requiring a balanced budget. The map of the United States (page 337) shows the states that have acted as of the summer of 1982. If three more states signed up and if Congress ruled all petitions were valid, Congress could be required to call the first constitutional convention since the Constitution was written in 1787.

Why the Convention Method Has Not Been Used

Why have there been no successful efforts so far to call an Article V Convention? There seem to be at least three reasons.

Congress Steps In. The first and most important reason is that Congress may step in, take over the amending process and propose the amendment being requested. In the 20th Century, four amendments to the Constitution were proposed by Congress after campaigns to call Article V Conventions on each topic were started. The 17th Amendment (direct election of Senators), the 21th Amendment (repeal of prohibition), the 22nd Amendment (limits on the President's term of office), and the 25th Amendment (Presidential disability) were all proposed this way.

Indeed, the goal of some campaigns to call an Article V Convention is to force a balky Congress to act. The idea is to get Congress to propose its own version of a desired Amendment in order to prevent the states from convening a new constitutional convention.

Fear of a Runaway Convention. But why would Congress not want to call a constitutional convention? There is a fear of a "runaway" convention, both in and out of Congress.

Many people fear that once a convention started, it would go beyond the subject for which it was convened. For example, they argue that a convention to propose a balanced-budget amendment might start to tamper with the Bill of Rights or limit the powers of the Supreme Court or change the powers of Congress. Indeed, some warn that, once in session, any Article V Convention might write an entirely new constitution.

Fears of a runaway convention are not new. In 1789, James Madison wrote that he was against calling a second constitutional convention to draw up a Bill of Rights. Rather, he wanted Congress to propose such amendments. Madison wrote:

> The Congress who will be appointed to execute as well as to amend the Government, will probably be careful not to destroy or endanger it. A convention, on the other hand, meeting in the present ferment of parties, and containing perhaps . . . (untrustworthy) characters from different parts of America, would at least spread a general alarm, and be too likely to turn everything into confusion and uncertainty.

Indeed, the convention that created our Constitution in 1787 was only supposed to amend the Articles of Confederation. Thus, as political scientist Frank Sorauf points out, our Constitution was itself the product of a "runaway convention" in 1787. He adds, it is ironic that Congress seeks to protect that same document from another runaway convention. However, Sorauf explains: "Congressional fear of the unknown is great. Moreover, the Congress is jealous of its own powers and suspicious of what it cannot control."

Could Congress force an Article V Convention to stick to one specific issue, such as a balanced-budget amendment? There is no clear answer. Some constitutional scholars and lawmakers say it could. Others disagree. "It could turn into a circus," claims one lawmaker.

Late Forming Opposition. There is a third reason why calls for an Article V Convention have failed. Organized opposition to such a campaign usually is slow to form. Eventually, however, it becomes quite powerful and manages to stall a campaign at the last moment. This is why many campaigns fail after having gained support from nearly two-thirds of the state legislatures.

Here is what can happen. Proponents of a convention on some issue, such as a balanced budget, usually are well-organized at the start. They have money, careful plans and corps of volunteers. They get an early jump on the opposition.

However, once the opposition organizes, it can be powerful, and it only needs support from one-third plus one of the states to block a convention. One reason for the opposition's strength is that it usually includes Congress.

As opposition to the campaign for a balanced budget convention has grown, leading members of Congress have become tough with state legislatures. For example, the powerful Chairman of the Senate Budget Committee growled that, if state legislatures kept pushing for a convention, Congress might start balancing the budget by cutting the $83 billion a year in grants and revenue sharing it sends to the states.

An Article V Convention At Work

Should a convention ever get started, how would it work? No one knows for sure. The few words in Article V of the Constitution explain nothing about procedures for holding a convention.

Congress would decide how a convention should be run. In 1971 and 1973, the Senate passed bills about how a convention should be organized, but these bills died in the House. It seems likely each state would have as many convention delegates as it has Senators and Representatives. Congress would also try to limit the convention to a specific topic. Finally, Congress would set the date and place for a convention.

Conclusion

Is an Article V Convention likely to happen in the near future? Probably not, but it is impossible to be sure.

What is certain is that, as long as the mechanism stays in the Constitution, supporters of one cause or another will try to make use of it. Currently, supporters of an amendment to ban abortions have convinced more than a dozen state legislatures to petition Congress for a convention on the topic. Thus, the possibility of an Article V Convention on one subject or another is likely to enliven American politics for many years to come.

Reviewing Facts and Ideas

1. How have all 26 amendments to the Constitution been proposed?
2. What other method is there for proposing an amendment to the Constitution?
3. What are the two ways to ratify amendments to the Constitution?

4. On which two topics did the states almost succeed in calling an Article V Convention?
5. Which four Amendments--started by the Article V Convention method--were eventually proposed by Congress?
6. Why does Congress fear a "runaway convention?"
7. Why do so many campaigns for an Article V Convention seem to stall at the last minute?
8. Who would set the rules for an Article V Convention should one convene?

Interpreting Evidence

1. Refer to the chart on page 338.
   a. According to Article V of the Constitution, what are four different ways that amendments may be made (proposed and ratified) to the Constitution?
   b. Which two of the four ways have never been used?
   c. Which of the four ways has been used only once?
2. Refer to the map of the United States on page 337.
   a. What is the main idea of this map?
   b. How many states have approved a constitutional convention for a balanced budget amendment?
   c. Which four states seem like good possibilities to be the next to approve such an amendment? Why?
   d. Which sections of the country are most in favor of proposing a balanced budget amendment?
3. Refer to James Madison's comments about a convention on page 334.
   a. What is the main idea of this statement?
   b. Would Madison favor an Article V Convention today about a balanced budget or any other topic? Give reasons for your answer.
   c. Do you agree or disagree with Madison's fears about a convention?

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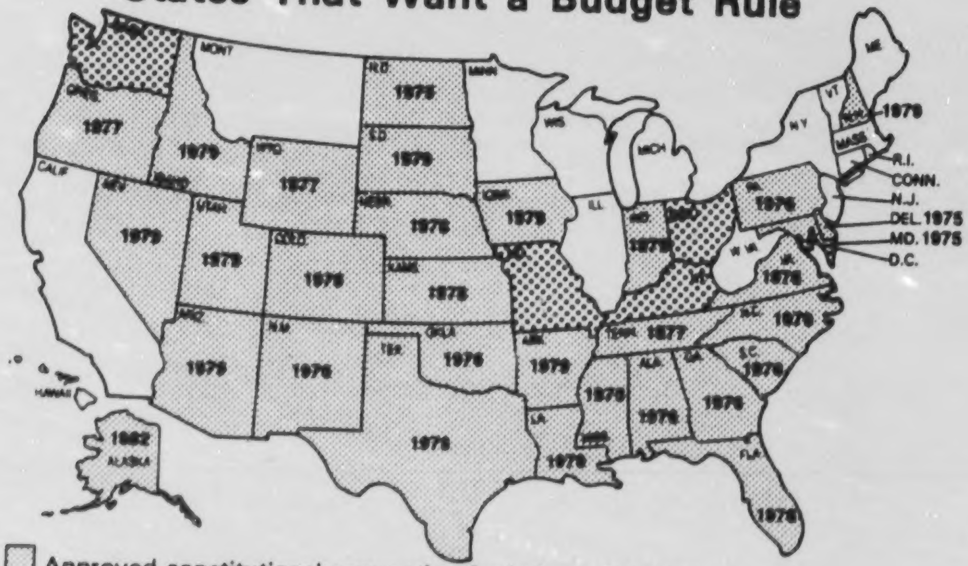
States That Want a Budget Rule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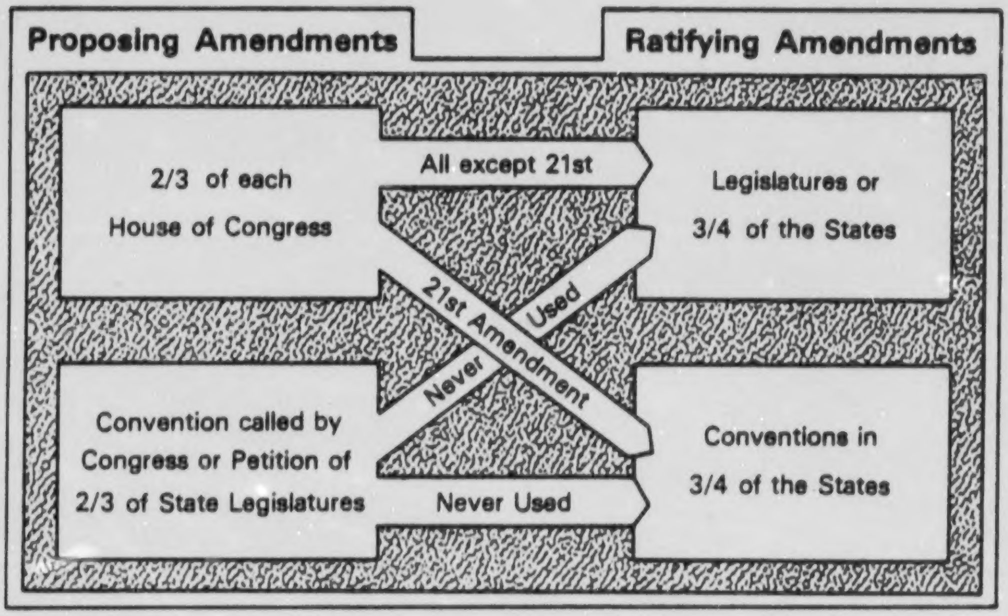
ALA.
1976
GA.
1976
FLA.
1976
HAWAII
1982
ALASKA

▢ Approved constitutional convention for balanced budget

▨ One house of legislature has approved convention

The information on this map shows the situation as of August, 1982.

Methods of Amending the Constitution


Proposing Amendments
Ratifying Amendments
2/3 of each House of Congress
All except 21st
Legislatures or 3/4 of the States
21st Amendment
Never Used
Convention called by Congress or Petition of 2/3 of State Legislatures
Never Used
Conventions in 3/4 of the States

LESSON PLAN AND NOTES FOR TEACHERS

IV-4. A New Constitutional Convention: Another Way to Amend the Constitution

Preview of Main Points

This lesson focuses on attempts to call a convention to propose constitutional amendments. A convention is the other, so far unused, method of proposing amendments spelled out in the Constitution. This unused method is explained along with reasons why all attempts (to date) to convene a convention have failed.

Connection to Textbooks

Both government and history textbooks briefly mention the convention method of proposing amendments. This lesson will enrich textbook discussions of formal ways to amend the Constitution.

Objectives

Students are expected to:

1. identify two recent attempts to call a constitutional convention;
2. understand why a convention to propose amendments to the Constitution has never been called;
3. understand how efforts to call a convention may force Congress to propose its own amendment to the Constitution;
4. increase awareness of the political dynamics associated with efforts to formally amend the Constitution;
5. practice skills in interpreting evidence from maps, diagrams and primary source material.

Suggestions For Teaching The Lesson

This is a case study lesson. It provides an in-depth look at one method of proposing amendments to the Constitution. Use questions at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening the Lesson

- Inform students about the main point of the lesson.

- Have students refer to the diagram in their textbooks which shows the two methods of proposing and two methods of ratifying amendments. You may use the diagram that accompanies this lesson if you wish. Use the diagram as a transparency and/or distribute copies to students.

  Explain to students that they will study the convention method shown in the diagram. Point out to students that although a convention has never been called, they will learn in this lesson that efforts to call a convention have forced Congress to propose four Amendments (the 17th, 21st, 22nd, 25th) it might not otherwise have proposed.

Developing The Lesson

- Have students read the case study.

- Ask students to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.

- Move to consideration of the interpreting evidence questions. Conduct a discussion of questions about interpreting evidence.

Concluding The Lesson

- Ask the class whether they believe fears of a "runaway convention" are justified. Conduct a discussion around their responses.

Suggested Reading

Hall, K., Hyman, N. and Sigal, L. (eds) *The Constitutional Convention as an Amending Device* (Washington, D.C.: Project '87 of the American Historical Association and the American Political Science Association, 1981).

This paperback is an excellent source of information about amending the Constitution. Many ideas in this lesson were derived from Frank Sorauf's chapter in this book, "The Political Potential of an Amending Convention."

IV- 5. THE ORIGIN OF POLITICAL PARTIES

Our written Constitution spells out the basic plan for government in the United States. Yet some very important features of our political system are not mentioned in the Constitution. These features have developed informally as we have gone about the day-to-day business of governing ourselves. This is one way our Constitutional system has changed and kept up to date with the times.

A good example of such informal change is our political party system. The Constitution does not say a single word about political parties. Yet, today you cannot fully understand American politics without knowing how our two-party system works.

Take Congress, for example. Both the House and Senate are organized around the two major parties. In both chambers desks are arranged so Democrats sit on one side of the hall; Republicans on the other. Key Congressional leaders are chosen by members of their own party. The top jobs, such as Speaker of the House, go to members of the majority party. And when all is said and done, a lawmaker's party affiliation (Republican or Democrat) is the best predictor of how he or she will vote on bills.

In this lesson you will learn how political parties get started in the United States. You will also learn what our first parties stood for and what eventually happened to them.

The Founders and Political Parties

The men who wrote the Constitution disliked political parties or "factions" as they called them. They could not foresee that political parties would be needed in a large democracy to inform voters on issues and give them a choice of policies. In the Founders' experience factions were small groups of politicians working together in parliaments strictly to promote their narrow, special interests.

The Founders worried that in the new nation political parties would simply become bigger and fiercer factors. They feared that the national unity needed for the new government to survive would be ruined by the effects of parties. Benjamin Franklin, for example, warned of the "infinite mutual abuse of parties, tearing to pieces the best of characters."

Given such concerns, the Founders tried to design the new Constitution to spread power so widely that no one faction could control the government. By separating power into three separate branches and giving each branch ways to check the other, they sought to cure what Madison called the "mischiefs of faction."

As things turned out, some of the very men who were so concerned about parties were later to become deeply involved in creating our first two political parties. Our two party system started in the early 1790's as the new nation's first political leaders began to wrestle with practical policy problems during President Washington's administration. Here is what happened.

Practical Issues Set The Stage For Parties

On April 30, 1789 George Washington took the oath of office as President. The new government was underway.

The first Congress was filled with men who had supported the Constitution. Among them was James Madison who came to be known to history as the "Father of the Constitution." In the executive branch Washington named Alexander Hamilton his Secretary of the Treasury. Thomas Jefferson, newly returned from Europe where he had been ambassador to France, became the first Secretary of State.

The just completed ratification contest over the new Constitution was still fresh in everyone's mind. Yet the Constitution itself quickly ceased to be a political issue. By the time Congress met for its second session in 1790 politicians had stopped arguing over whether the new Constitution was good; they agreed it was. Instead, their attentions were drawn to tough policy problems facing the new government.

Some Key Issues. Important questions facing the Congress included: How should the national government settle the nation's war debt and strengthen the economy? What should be the nation's position toward England and France? How centralized and powerful should the new national government be?

Soon two rival groups began to emerge within Congress as lawmakers took different positions on such issues. On one side were lawmakers who generally favored a strong national government, economic policies which benefited northeastern commercial interests and were pro-British. These men began to unite around Alexander Hamilton's leadership.

On the other side were lawmakers who wanted a weaker national government, economic policies that favored the lower-class, debtors and farmers, and were pro-French. These men found the ideas of Thomas Jefferson and James Madison attractive.

Thus as early as 1790 the stage was set for the development within Congress of political parties. A key event which sparked the actual formation of two parties--the Federalists (led by Hamilton) and the Republicans (led by Madison and Jefferson)--was the Washington administration's plan to create a national bank.

A Conflict Over Economic Policy

President Washington wanted to stay "above politics" during his two terms in office. He left it largely up to the bright and ambitious Alexander Hamilton to push the Administration's economic policies through Congress. To get the job done Hamilton began building a coalition among small factions of lawmakers with similar interests. In other words, Hamilton had started to build our nation's first political party.

In December, 1790 Hamilton submitted to Congress a plan to create a national bank. The bank would store government money, help collect and spend taxes and issue bank notes which could be used as money. The bank plan was clearly designed to strengthen the national government. In addition, members of Congress recognized that the bank would benefit northern business groups and the wealthy.

Congress immediately began to debate the bank bill. Hamilton frequently called his supporters in the House and Senate together before legislative sessions to plan strategies. The bank bill sailed easily through the Senate.

Both Madison and Jefferson strongly opposed Hamilton's economic policies. With Jefferson's encouragement Madison organized opposition to the bank bill in the House. Hamilton, however, had the votes and the House passed the bill.

Now President Washington faced a decision. Would he veto the bank bill or would he support Hamilton and sign the bill into law? Both Hamilton and Jefferson prepared long memos for the President; each arguing for his point of view on the bank. On February 25, 1791 to the dismay of Jefferson and Madison Washington signed the bank bill. The President had been persuaded by Hamilton's arguments that the young nation's welfare required not only a national bank but an interpretation of the Constitution which expanded the national government's powers.

Reaction to the Bank Issue

Jefferson and Madison were stung by Washington's decision. They believed Hamilton was pursuing bad policies that served to aid northern commercial interests at the expense of the nation as a whole. They also thought Hamilton was subverting the Constitution itself by trying to expand the national government beyond its Constitutional limits.

The Republican Party. Followers of Jefferson and Madison in Congress now rallied around these leaders in open opposition to Hamilton and his supporters. They began calling themselves "Republicans." By doing so they hoped to suggest that their opponents secretly favored a monarchy.

These Republican lawmakers reflected a "grass roots" philosophy which included a fear of rule by bankers and commercial interests, a dislike of big, expensive government and belief in the virtue of working the land. At the same time, wealthy Southern planters were attracted to Republican ideas for very practical reasons; they feared a strong national government might interfere with slavery.

The Federalist Party. Hamilton's followers in Congress took the label "Federalists." The term had once been used to refer to all supporters of the Constitution. They wanted to imply that their opponents were "anti-federalists" or opponents of the now widely popular Constitution.

To Hamilton and his followers Jefferson and the Republicans were not just opposing Hamilton's economic policies but the very idea of a national government. Federalist lawmakers believed local interests must take second place to the good of the nation as a whole.

The Federalists led by Hamilton believed deeply in strong government. They thought the real danger to freedom came not from big government but from the popular passions of the people themselves. They favored a limited government but one that had enough power to protect property owners and the well-to-do from the excesses of the common people.

A Public Quarrel. By 1792 both Jefferson and Hamilton went "public" with their attacks on one another. Each used newspapers published by their political parties to attack the ideas of the other. At the very time both were helping to build political parties, each accused the other of the worst crime they could think of--promoting factionalism.

Jefferson charged that Hamilton's efforts to promote his economic policies were "as a machine for the corruption of the legislature." He added that:

> It must be acknowledged that his machine was not without effect. That even in this, the birth of our government, some members were found sordid enough to bend their duty to their interests, and to look after personal, rather than public good.

Hamilton wrote Washington in September, 1792 to give his version of the struggle. He complained bitterly of Jefferson's efforts to build a political party.

> I *know* that I have been an object of uniform opposition from Mr. Jefferson...I *know* from the most authentic sources that I have been the frequent subject of the most unkind whispers and insinuations from the same quarter. I have long seen a party formed in the Legislature under his auspices, bent upon my subversion.

President Washington was dismayed by these developments but could do little about them. When he retired as President he devoted must of his Farewell address to condemning parties. He said:

> Let me warn you in the most solemn manner against the baneful effects of party generally...[the party spirit] agitates the community with ill-founded jealousies and false alarms, kindles the animosity of one part against another, foments (causes) occasional riots and insurrection.

The Parties In Congress. By the mid 1790's the two rival parties were well-established in Congress. Most lawmakers in both chambers had become divided into two voting groups--the Federalists on one side and the Republicans, or Democratic-Republicans as they were sometimes called, on the other.

In the early stages of the battle between the two parties the Federalists held several advantages. They were better organized, had more government experience and controlled federal offices. In the Senate, especially, the Federalists regularly held a majority. However, even during this period the House of Representatives was almost evenly divided between Federalists and Republicans.

By 1793 political observers were comparing the two parties in Congress to Prussian military units. Each maneuvering and voting like soldiers obeying their officers. At one point Jefferson complained that the Federalists were better organized than the Republicans noting that they voted with the precision of a "squadron." Republicans often voiced similar complaints about their rivals. Such competition stimulated the growth of even more party spirit among the lawmakers.

Popular Support. Unlike today's two major political parties, the first parties did not have broad based popular support among the voters. Rather, our two party system began as a struggle within Congress between lawmakers with different ideas about government and the key issues facing the new nation. Above the lawmakers stood the two cabinet officers--Hamilton and Madison--locked in basic disagreement about the role of government.

The idea of "political party" spread outward from Congress only as each party sought to build popular support for its programs and candidates among the voters. By the late 1790's our first two parties were just beginning to develop the characteristics we associate with today's political parties such as catchy slogans, techniques for getting out the vote, local organization in cities and counties, and support by large numbers of average citizens.

Yet the genii was out of the bottle. Hamilton, Jefferson, Madison and others had started a new political institution that would become an important part of our Constitutional system. In so doing they had added to the meaning of the Constitution without ever changing a word in the document.

Aftermath

What happened to the original two parties? The Democratic-Republicans went on to eventually become today's Democratic party. Jefferson was elected to the Presidency in 1800 and a long period of dominance in Congress by the Democratic-Republicans began (see Table 1).

The Federalists were not so fortunate. They were unable to compete with the rising Democratic-Republicans. They elected their last President (John Adams) in 1796. By the early 1800's they had shrunk to a small New England base. After 1816 they disappeared completely.

Reviewing Main Ideas and Facts

1. True or False? (Be prepared to explain your choices.)

   a. The Founders designed the Constitution to encourage political parties.

   TRUE FALSE

   b. James Madison served as Washington's Secretary of the Treasury.

   TRUE FALSE

   c. Alexander Hamilton submitted a plan for a national bank to Congress.

   TRUE FALSE

   d. Supporters of Thomas Jefferson called themselves "Republicans."

   TRUE FALSE

e. From the beginning the Republicans dominated both houses of Congress.

TRUE FALSE

2. What did the Founder's mean by "Factions"?

3. Why did the Founders dislike political parties?

4. What positions did Thomas Jefferson and Alexander Hamilton hold in Washington's administration?

5. What issues divided lawmakers in the early Congress?

6. Why did Hamilton begin to form a political party in Congress?

7. Why did Washington support Hamilton's plan to establish a national bank?

8. What political beliefs were shared by the Federalists?

9. What political beliefs were shared by the Republicans?

10. How were the first two political parties different from today's political parties?

Interpreting Evidence

Use the information in Table 1 to answer the following questions:

1. Describe in a short paragraph the kind of information displayed in Table 1.

2. From 1790 to 1801 which party held the majority in the Senate?

3. Who was the last Federalist President? What years did he serve?

4. Which party dominated Congress after President Adams terms of office?

5. What can be inferred from the table about public support for the Federalists?

TABLE 1

Political Party Strength in Congress

(F = Federalists; DR = Democratic-Republicans)

			Senate		House	
Congress	Year	President	Majority Party	Principal Minority Party	Majority Party	Principal Minority Party
1	1789-91	F Washington	-------no political parties yet----------			
2	1791-93	F Washington	F 16	DR 13	F 37	DR 33
3	1793-95	F Washington	F 17	DR 13	DR 57	F 48
4	1795-97	F Washington	F 19	DR 13	F 54	DR 52
5	1797-99	F Adams	F 20	DR 12	F 58	DR 48
6	1799-01	F Adams	F 19	DR 13	F 64	DR 42
7	1801-03	DR Jefferson	DR 18	F 14	DR 69	F 36
8	1803-05	DR Jefferson	DR 25	F 9	DR 102	F 39
9	1805-07	DR Jefferson	DR 27	F 7	DR 116	F 25
10	1807-09	DR Jefferson	DR 28	F 6	DR 118	F 24
11	1809-11	DR Madison	DR 28	F 6	DR 94	F 48
12	1811-13	DR Madison	DR 30	F 6	DR 108	F 36
13	1813-15	DR Madison	DR 27	F 9	DR 112	F 68
14	1815-17	DR Madison	DR 25	F 11	DR 117	F 65
15	1817-19	DR Monroe	DR 34	F 10	DR 141	F 42
16	1819-21	DR Monroe	DR 35	F 7	DR 156	F 27
17	1821-23	DR Monroe	DR 44	F 4	DR 158	F 25
18	1823-25	DR Monroe	DR 44	F 4	DR 187	F 26

Source: Richard B. Morris (ed.) and Jeffrey B. Morris (assoc. ed.), Encyclopedia of American History, 6th Ed. (New York: Harper & Row, 1982), pp. 1211-12.

LESSON PLAN AND NOTES FOR TEACHERS

IV- 5. The Origin of Political Parties

Preview of Main Points

This lesson describes the creation within Congress of our first two political parties--the Federalists and the Republicans--during the years 1790-1800. The pivotal role of Thomas Jefferson, James Madison and Alexander Hamilton in starting the parties is featured. The political viewpoints associated with each party are presented along with tabular information about their strength within early Congresses. The development of political parties is presented as an example of the informal ways in which Constitutional change may occur.

Connection to Textbooks

History and government textbooks briefly mention the development of the first political parties. This lesson explains in detail how and why parties developed. It could supplement government textbook materials on informal means of Constitutional change or the development of political parties. The lesson could enrich history text discussions of the Washington administration and the operations of the newly formed national government.

Objectives

Students are expected to:

1. explain why the Founding Fathers were suspicious of "factions" or political parties;
2. explain the role of Alexander Hamilton, Thomas Jefferson and James Madison in the development of political parties;
3. identify key political issues which divided lawmakers in the early Congress;
4. explain the significance of the national bank issue in the development of political parties;
5. identify the political beliefs associated with the Federalist and the Republican parties;
6. tell how the first parties developed within Congress and then spread outward in search of popular support among the voters;
7. explain why the development of political parties illustrates the informal development of the Constitution.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" case study of the creation of our first two political parties and the informal means through which our Constitutional system has developed. After reading textbook materials on the Washington administration or informal means of Constitutional change, students can turn to this case study for more details. The lesson can be used to introduce government textbook material on the origins of our two-party system.

Opening The Lesson

- Inform students that a leading political scientist once said: "Political parties created democracy and... modern democracy is unthinkable save in terms of the parties." Ask students how they think political parties contribute to democracy. Some possible answers include:
  - -- they stimulate interest in politics.
  - -- they provide people with information about complex public issues.
  - -- they recruit candidates for public office.
  - -- they take the responsibility for running government and provide a loyal opposition to those in power.
- Ask students how our political party system got started. Where did the practices come from. Were they call for in the Constitution?
- Inform students that this lesson will deal with such questions. Preview the main points of the lesson for students. You might also explain how this lesson is connected to the material they have been studying in the textbook.

Developing The Lesson

- Have students read the case study. Then conduct a discussion of the review questions at the end of the lesson. Make certain that students have understood the main ideas of the lesson.
- NOTE: The last section of the case-study, "Aftermath," briefly recounts the subsequent history of the first two parties. Some textbooks have an illustration which shows the evolution of these parties into today's two major

parties. You may want to refer students to that chart or to the chart provided with this lesson--"American Political Parties Since 1789"--to see the total picture of party evolution in the United States.

- Have students examine Table 1. Use the "interpreting evidence" questions to guide student use of these data.

Concluding The Lesson

- Remind students that Washington sought to stay "above politics" and was disappointed with the development of political parties. Yet Washington fairly consistently supported Hamilton's (i.e. Federalist) policies. And in 1795 when discussing cabinet appointments the President declared:

> I shall not, whilst I have the honor to administer the government, bring any man into any office of consequence knowingly whose political tenets (beliefs) are adverse to the measures which the general government are pursuing; for this, in my opinion, would be a sort of political suicide.

Ask students: Why would Washington make such a statement? Does the statement indicate that Washington himself was acting like a political party leader?

IV-6. THE SUPREMACY OF FEDERAL LAW: WASHINGTON'S DECISION TO PUT DOWN THE WHISKEY REBELLION

In the 18 years after declaring independence, the United States could be proud of two great achievements. It had won freedom from Britain and had created a marvelous system of government, unlike any other. But 1794 brought troubles that threatened to undo these hard-won gains. Money was the root of the problem.

The new federal government had huge debts. Millions of dollars had been borrowed from private citizens and foreign governments. State governments had also borrowed from citizens. The new national government decided to take on all these debts, including those of the states; the total was about $80 million. In 1794 that was an almost unbelievable amount of money. Someone had to come up with a plan to pay back that money and keep the government from going bankrupt. That task fell to Alexander Hamilton, our first Secretary of the Treasury and an advisor to President Washington.

An Excise Tax

An excise tax was one part of Hamilton's overall plan to pay our debts. An excise tax is a tax on goods that are both manufactured and consumed within a country.

Hamilton realized that excise taxes were unpopular. Britain's attempt to lay an excise tax (the Stamp Act of 1765) was repealed in the face of united colonial opposition. Yet Hamilton found other alternatives for raising money unappealing. If taxes were raised on property or placed on income, the wealthy Easterners would complain. Without the support and commitment of America's wealthy class, Hamilton did not see how the nation would survive economically. If he raised tariffs (taxes on imports), trade with foreign countries would slow down; this would also hurt America's industries, as well as its merchants. So Hamilton persuaded Congress to pass, and President Washington to sign, the Excise Act in March of 1791. This law established a tax on items such as snuff, loaf sugar and whiskey.

Farmers React to the Excise Tax

The Farmer's Situation. Beyond the Allegheny Mountains in western Pennsylvania was a frontier settled by fiercely independent farmers who grew grain, especially rye. Whatever extra grain they would harvest could buy other necessities of frontier life. Transportation was a real problem, though. It was too expensive to ship bulky grain by mule over the mountains and to the East; the Mississippi River to the West was closed to Americans. So the only answer was to use the grain to distill whiskey. Grain as whiskey was much more portable. It became a kind of currency of its own when traded for axes and fabric and the like.

Since one-fourth of all the nation's stills (used to distill whiskey) were located in western Pennsylvania, the Excise Act of 1791 hit the farmers of Washington County like a lightning bolt. A tax of 25¢ per gallon now had to be paid, and in cash. Unlike producers of snuff and loaf sugar, the farmers could not pass along the tax to the consumer, because whiskey was traded more often than sold for cash. Farmers were also angry that the tax affected western Pennsylvania more than elsewhere. They would end up paying off much of the war debt themselves. Finally, anyone who didn't register his still had to appear in federal court 300 miles east in Philadelphia. With no one to tend a farmer's crops in his weeks of absence, his entire crop could die.

The farmers of Washington County, Pennsylvania, decided to defy the law. They would not pay the Whiskey Tax!

The Whiskey Rebellion Begins. In September of 1791, representatives of the farmers met in Pittsburg to draft a protest to be sent to the President. Lacking agreement on a course of action, the meeting adjourned, but protest grew. For three years farmers tarred and feathered federal tax collectors and refused to pay. A formal protest was sent eventually to President Washington, who was outraged by this defiance of federal law.

In July of 1794, John Neville (excise inspector for the county) and David Lenox (a federal marshal) tried to serve a summons ordering a farmer to appear in federal court in Philadelphia. At that moment, a group of armed farmers arrived forcing a hasty retreat by these federal officials. Followed to his estate by farmers, Neville found himself under seige. In a two-day gun battle, six of his men were wounded and one farmer was killed. The attackers were finally driven off by a small group of state militiamen.

A short time later, Major James McFarlane led 500 armed farmers toward Neville's home. Just as this force arrived, and discussions began, someone fired a shot into the crowd and killed McFarlane. In a rage, the farmers overpowered the militiamen protecting the house, wounding some and utterly destroying the premises. Neville had enough time to escape. David Lenox, however, was seized and held captive for a time.

By August 2, 1794, five thousand whiskey-makers were assembled outside of Pittsburg, led by self-proclaimed "Major

General" David Bradford, a lawyer. In fear, citizens of Pittsburg welcomed this small army into the city.

The Federal Government Responds to the Whiskey Rebellion

Repeal or Enforce the Law? As early as September of 1792, Alexander Hamilton predicted a small rebellion in western Pennsylvania. He may even have looked forward to the conflict as a test of the authority of the Federal government over the states. If strong action were taken, the supremacy of the federal law and of the central government would be demonstrated. Hamilton presented his position in a newspaper article. Under the name of Tully, Hamilton wrote:

> Let us see what is this question. It is plainly this--Shall the majority govern or be governed? Shall the nation rule or be ruled? Shall the general will prevail, or the will of a faction? Shall there be government or no government?
>
> Let it be deeply imprinted in your minds, and handed down to your latest posterity, that there is no road to despotism more sure or more to be dreaded than that which begins at anarchy.

Hamilton urged George Washington to act quickly. The President had to make a decision about the rebels in western Pennsylvania.

The President's Predicament. Hamilton's arguments for the use of force were hard to challenge. The new nation would not be able to survive if a group of citizens could defy laws passed by Congress. Negotiations had been going on over the three years since passage of the Excise Act, but the farmers would not budge. The government of Pennsylvania was unable to enforce the law, and its governor was reluctant to increase his effort to do so. (Governor Mifflin did not want to antagonize the farmers on whom he relied for support.)

The Constitution and all laws made according to the Constitution were supposed to be "the supreme law of the land" (Article VI, Section 2). That principle was being challenged. The Federal government had to exercise its constitutional right to call out the militia and enforce the law (Article I, Section 8, Clause 15). And Washington would be the commander-in-chief of those troops (Article II, Section 2, Clause 1). If these powers were not used, our government under the Constitution would be no stronger than it had been under the Articles of Confederation.

The arguments opposed to the use of armed force were also strong. Influential sources, including Thomas Jefferson, claimed that Hamilton's heavy-handed approach showed his bias against the farmers and in favor of urban, wealthy Easterners. Hamilton never really believed that common people could govern themselves well. What he really wanted, claimed his opponents, was to create an American monarchy. If the President followed Hamilton's advice, people would say that King George III had just been replaced by King George Washington. What would foreign countries think about us then? Maybe the best thing to do would be to repeal the tax on whiskey and find a substitute. Surely that is better than taking arms against your own citizens!

Finally, what would happen if the government lost in a battle against the rebels? The federal government and the Constitution might be discredited.

The President's Decision. Washington decided to follow Hamilton's advice. With the support of Congress, the President issued a proclamation on August 7, 1794. He ordered rebellious citizens to end their "treasonable acts." At the same time, he called out the militia to suppress any continuing disorder. (See the Document on page 359.)

When the farmers of western Pennsylvania read the proclamation, they were even more outraged. Now they were being called traitors, and government officials were still demanding complete obedience to the hated Excise Law. They would not give in to the federal government.

Washington continued to assemble troops to put down what he now saw as a real rebellion. Governor Mifflin of Pennsylvania cooperated fully with the President. When 12,900 men had been assembled from four states, a larger force than he'd ever commanded in the Revolution, Washington placed them under the command of General "Light-Horse Harry" Lee (father of Robert E. Lee, Confederate general during the Civil War).

The President accompanied his troops westward to Bedford, Pennsylvania, before returning to Philadelphia. This was the only time in American history when a President, as commander-in-chief, has ever taken the field with his army. Alexander Hamilton, in uniform, also rode with the troops. To their surprise, however, they were met with no resistance. No battles were fought. Leaders of this "rebellion" had vanished across the Ohio River, and only a handful of prisoners were taken. In the end, all but 20 men were pardoned by General Lee; of these, only two were found guilty of treason, and the President pardoned them.

The Results: The Supremacy of Federal Law Is Affirmed

Americans were divided about the wisdom of Washington's decision. Thomas Jefferson denounced the government's use of force against this so-called rebellion. His sympathies had always been with the farmers. He feared the power of wealthy city dwellers. He also believed that the new federal government (if too strong) would abuse its power. Not surprisingly then, Jefferson claimed that "an insurrection was announced and proclaimed and armed against, but could never be found." But Hamilton pointed to the danger of underestimating civil disorder:

> Beware of magnifying a riot into insurrection by employing in the first instance an inadequate force. 'Tis better far to err on the other side. Whenever the government appears in arms, it ought to appear like a Hercules, and inspire respect by the display of strength. The consideration of expense is of no moment compared with the advantages of energy.

As the years passed, the conditions leading to the Whiskey Rebellion disappeared. The Mississippi River was opened to Americans in 1795 (Pinckney's Treaty), so farmers could now ship grain and did not have to convert it to whiskey. The Excise Act was repealed when Thomas Jefferson became President. What did not disappear, though, was a key principle of our Constitution--the supremacy of the Constitution and federal laws made under it.

The principle of federal supremacy had been upheld in the Whiskey Rebellion. It showed that the federal government could enforce laws passed by Congress, even to the point of bringing troops under federal command into the state or states where the law was being ignored.

Barely eight years earlier, the government under the Articles of Confederation had been powerless to help quell the disorder of Shay's Rebellion in Massachusetts. Leaders with vision corrected this flaw on paper in the Constitution (Article VI, Section 2), but it was President Washington's decision that established the federal government's right to enforce laws in all the states. As history records, though, there would be more challenges to federal supremacy as our nation grew through the 1800's.

Reviewing Facts and Main Ideas

1. Why did Alexander Hamilton believe an excise tax was necessary?
2. For what reasons were the farmers of western Pennsylvania opposed to the whiskey tax?
3. When farmers refused to obey the law, how did Hamilton think the national government should respond? Why?
4. How did Thomas Jefferson think the national government should respond? Why?
5. For what reasons was President Washington reluctant to use force against the "rebels"?
6. How was the Whiskey Rebellion finally ended?
7. What important constitutional principle was supported by Washington's decision to put down the Whiskey Rebellion?

Analyzing a Document

Examine the document, page 359. Use information in the document to help you answer the following questions.

1. Washington claimed that the "rebellious" farmers of western Pennsylvania were committing acts of treason.
    a. How does he support that claim in his proclamation? (Check Article III, Section 3, in the Constitution to find the definition of treason.)
    b. Do you think Washington is justified in applying the term "treason" to the events of July 16 and 17? Why or why not?
2. How do we know that Congress must not have been in session on August 7, 1794?
3. Every law passed by Congress and signed by the President must, of course, be constitutional. What leads you to believe that the law described in the proclamation is constitutional?
4. In the United States, no one is supposed to be above the law. What evidence is there that Washington is obeying the law he describes in the proclamation?

Using Decision-Making Skills

1. What was the occasion for Washington's decision?
2. What alternatives were open for President Washington in this case?
3. What were the likely consequences for each of the President's alternatives?
4. What were Washington's most important goals or values in this situation?
5. Why did Washington decide on the actions he finally took?
6. How would you judge Washington's decision in this case? Did he make a good decision? Explain your answer.

DOCUMENT

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas combinations to defeat the execution of the laws laying duties upon spirits distilled within the United States and upon stills have from the time of the commencement of those laws existed in some of the western parts of Pennsylvania; and . . . .

Whereas many persons in the said western parts of Pennsylvania have at length been hardy enough to perpetrate acts which I am advised amount to treason, being overt acts of levying war against the United States. . . .

Whereas by a law of the United States entitled "An act to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions," it is enacted "that whenever the laws of the United States shall be opposed or the execution thereof obstructed in any State by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by that act, the same being notified by an associate justice or the district judge, it shall be lawful for the President of the United States to call forth the militia of such State to suppress such combinations and to cause the laws to be duly executed. And if the militia of a State where such combinations may happen shall refuse or be insufficient to suppress the same, it shall be lawful for the President, if the Legislature of the United States shall not be in session, to call forth and employ such numbers of the militia of any other State or States most convenient thereto as may be necessary; and the use of the militia so to be called forth may be continued, if necessary, until the expiration of thirty days after the commencement of the ensuing session: Provided always, That whenever it may be necessary in the judgment of the President to use the military force hereby directed to be called forth, the President shall forthwith, and previous thereto, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time;" and

Whereas James Wilson, an associate justice, on the 4th instant, by writing under his hand, did from evidence which had been laid before him notify to me that "in the counties of Washington and Allegany, in Pennsylvania, laws of the United States are opposed and the execution thereof obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshal of that district;" and

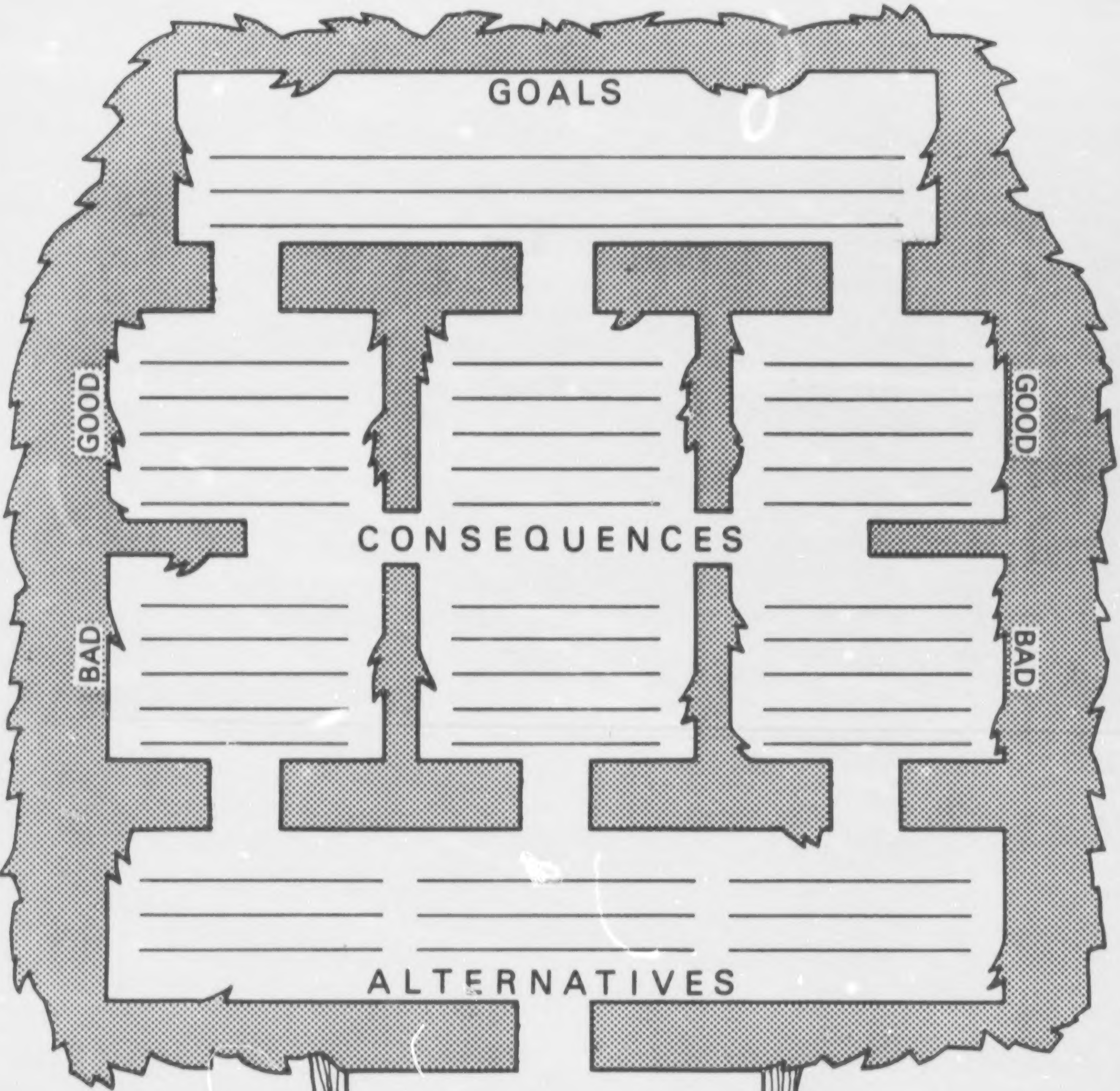
Whereas it is in my judgment necessary under the circumstances of the case to take measures for calling forth the militia in order to suppress the combinations aforesaid, and to cause the laws to be duly executed; and I have accordingly determined so to do, feeling the deepest regret for the occasion, but withal the most solemn conviction that the essential interests of the Union demand it, that the very existence of Government and the fundamental principles of social order are materially involved in the issue, and that the patriotism and firmness of all good citizens are seriously called upon, as occasions my require, to aid in the effectual suppression of so fatal a spirit:

Wherefore, and in pursuance of the proviso above recited, I, George Washington, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before the 1st day of September next to disperse and retire peaceably to their respective abodes. And I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts, and do require all officers and other citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to present and suppress such dangerous proceedings . . . .

Done at the city of Philadelphia, the
7th day of August, 1794, and of the Independence of the United States of America
the nineteenth.

G. Washington

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

IV-6. The Supremacy of Federal Law: Washington's Decision to Put Down the Whiskey Rebellion

Preview of Main Points

In this lesson, students view in some detail the circumstances and events of the Whiskey Rebellion of 1794. While a careful chronological account is presented, the focus is on President Washington's decision whether or not to intervene with force, a decision to be based on the arguments outlined in this account. Finally, in drawing a connection between the Whiskey Rebellion and Shays' Rebellion, the suggestion is advanced that the principle of federal supremacy was a basic source of conflict in the new nation.

Connection to Textbooks

Many standard texts do mention the Whiskey Rebellion and some of them identify federal supremacy as the principle at issue. Unfortunately, treatment of this historical event is brief and superficial. This lesson improves textbook accounts in several ways. First, in drawing attention to Shays' Rebellion, it suggests that constitutional principles undergo continuous evolution, linking the past to present events, and setting the stage for future refinements. Second, placing the rebellion in a decision making context assists in the development of decision making skills. Viewing real political actors engaged in decision making also spotlights the human side of history. Student interest is stimulated by the drama that human dilemmas generate. Finally, the opposing viewpoints expressed in the aftermath of the rebellion remind the student of the on-going philosophical conflict between Thomas Jefferson and Alexander Hamilton.

Objectives

Students are expected to:

1. explain the economic circumstances leading to imposition of the whiskey tax;
2. describe the reasons for opposition among whiskey distillers of western Pennsylvania;
3. enumerate the opposing arguments Washington weighed in arriving at his decision to use force;
4. make judgments about the President's characterization of farmers' actions based on documentary evidence;

5. identify links between events of the Rebellion and constitutional principles through documentary analysis;

6. analyze Washington's decision in terms of the Decision Tree;

7. make defensible judgments about Washington's decision.

Suggestions For Teaching The Lesson

The lesson is conceived of as an opportunity for in-depth study. Where textbook readings refer to the Rebellion, you can refer to that assignment as a lead-in to this case study. If your text omits this episode, any textual discussion of Washington's first term would be an appropriate starting place.

Opening The Lesson

- Begin the lesson by asking students to answer these questions: (1) What might happen to a government that proclaims laws, but does not strictly enforce them? (2) When, if ever, should the head of a government decide not to enforce a law?

- Use discussion of the preceding questions to introduce the case study about President Washington's decision to put down the Whiskey Rebellion. Indicate that the President was faced with a decision in 1794 about whether or not to enforce an unpopular federal law.

Developing The Lesson

- Ask students to read the case study about Washington and the Whiskey Rebellion.

- Conduct a discussion of the questions following the heading "Reviewing Facts and Main Ideas." Make sure that students understand the main ideas about the origins and resolution of this critical situation. Emphasize that Washington's decision upheld an important constitutional principle -- the supremacy of the Constitution and federal law within the federal system of government.

- Extended exerpts from Washington's proclamation are provided as an additional resource for students. You might first have students check to see that the narrative account of events in the case study coincides with the account given by the President. Are there details in the Proclamation not provided in the narrative?

- The student might next find the particular constitutional passages referred to in the "Analyzing a Document" section and assess how well the proclamation is grounded in the Constitution. It is apparent, as well, that Washington laid out his justification for action very carefully in this document; you might have students assess the document's detail and the President's reasons for being so meticulous, particularly with respect to Congress' role in resolving the rebellion.

- Use the questions under the heading "Analyzing a Document" to conduct a discussion of main ideas in Washington's "Proclamation."

Concluding The Lesson

- Use the Decision Tree to analyze the President's decision making moves.

- Have students use the questions under the heading "Decision Making Skills" to guide their analysis of Washington's decision.

- Conduct a class discussion about Washington's decision. Discuss what would have happened to the government and the Constitution if Washington had made some other decision.

- Have students make judgments about Washington's decision.

- Conclude the lesson by presenting the following ideas to students.

  The Whiskey Rebellion is not only linked in the past in Shays' Rebellion, but may be linked as well to critical events in the decades to follow. The supremacy of federal law was challenged again by South Carolina's 1832 Ordinance of Nullification, declaring void the tariff acts of 1828 and 1832. This time, the threat of secession was attached to any use of federal force.

  About 65 years after the Whiskey Rebellion, and one day after Ft. Sumter surrendered, President Lincoln issued a proclamation whose wording is remarkably similar to Washington's. (See the excerpt on the following page.) Federal supremacy was again challenged by a rebellion, but the circumstances were considerably more complex and the problems more intractable. The consequences of Lincoln's decision were a good deal different from those of his predecessor, three score and seven years earlier. They were associated with the beginning of the tragic Civil War.

BY THE PRESIDENT OF THE UNITED STATES

A PROCLAMATION

Whereas the laws of the United States have been for some time past and now are opposed and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by law:

Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth, the militia of the several states of the Union to the aggregate number of 75,000, in order to suppress said combinations and to cause the laws to be duly executed....

Done at the city of Washington,
this 15th day of April, A.D. 1861,
and of the Independence of the
United States the eighty-fifth.

Abraham Lincoln

Suggested Reading

Flexner, James Thomas. Washington: The Indispensable Man (New York: The New American Library, A Mentor Book, 1974), pp. 315-323.

Morris, Richard B. Great Presidential Decisions: State Papers That Changed the Course of History (New York: Harper & Row, Publishers, Perennial Library, 1973), pp. 21-27.

Suggested Film

GEORGE WASHINGTON AND THE WHISKEY REBELLION: TESTING THE CONSTITUTION

Enforcement of the federally imposed whiskey tax is the issue used to demonstrate the new nation's first challenge. The film uses dramatic action of Washington's military efforts against western Pennsylvania farmers' lawlessness. Learning Corporation of America, 1974, 27 minutes.

IV-7. STRETCHING THE CONSTITUTION: JEFFERSON'S DECISION TO PURCHASE LOUISIANA

President Thomas Jefferson faced a difficult decision during the summer of 1803. Napoleon, the ruler of France, had offered to sell Louisiana to the United States for $15 million. This vast territory extended westward to the Rocky Mountains and southward from the Canadian border to the Gulf of Mexico and the Spanish territories of Texas and New Mexico.

Jefferson had wanted only to pay $2 million for the region around the mouth of the Mississippi River, which included the port of New Orleans. American farmers in the Ohio River Valley depended on access to the port at the mouth of the Mississippi River. They loaded their crops onto boats and rafts, which floated down the Mississippi to New Orleans. From there the crops were shipped to American cities along the Atlantic coast or to other countries. Americans feared that the French might interfere with their trade by charging high taxes on products and ships moving through New Orleans. A more serious concern was the ever-present possibility that the French might close the port to Americans.

President Jefferson was astounded to find out that the French wanted to sell, not only New Orleans, but all the Louisiana Territory, which included about 828,000 square miles. This territory was about as large as the total land area of the United States in 1803; and it was bigger than all of Western Europe. Although the total purchase price seemed high, it was not beyond the means of the United States to pay it. Looked at as a cost per acre, the deal was a bargain -- about 4¢ per acre.

Jefferson was excited about the chance to buy all of Louisiana from France. However, the President was not sure that he had the power, under the Constitution, to accept Napoleon's offer. He faced two related constitutional issues:

(1) the issue of strict versus broad construction of the Constitution;

(2) an issue about the nature of the Federal Union.

The Issue of Strict Construction

As leader of the Republican Party, Jefferson was a strict constructionist, who believed that the national government should be limited strictly to the powers expressed in the Constitution. According to a strict constructionist interpretation of the Constitution, Jefferson could not buy Louisiana; because there was no statement in the Constitution granting power to the President or Congress to buy territory from another country.

According to the broad constructionists, such as Alexander Hamilton, the President could use the "elastic clause" (Article I, Section 8) to justify many actions not expressed specifically in the Constitution. The "elastic clause" says: "The Congress shall have power . . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."

Jefferson wanted to buy Louisiana, but he was reluctant to stretch the powers of the Federal government, as his Federalist Party rivals had done during the 1790's when they had established a national bank. Jefferson expressed his dilemma in a letter to John Breckinridge, a Republican leader in the Senate:

> The treaty must of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably be never again in their power. But I suppose they must then appeal to the nation for an additional article (amendment) to the Constitution, approving and confirming an act which the nation had not previously authorized . . . .

The President believed that only an amendment to the Constitution could provide him with the constitutional right to complete this deal with France. With the help of James Madison, the Secretary of State, President Jefferson drafted a proposed Amendment to the Constitution:

> Louisiana as ceded by France to the United States is made a part of the United States. It's white inhabitants shall be citizens, and stand, as to their rights and obligations, on the same footing with other citizens of the United States in analogous situations.

Jefferson quickly dropped the ideas of amending the Constitution, because it would take too much time. Meanwhile, Napoleon might withdraw his offer. James Madison and other trusted leaders in the Republican Party also argued that the right to purchase Louisiana could be implied from the treaty-making power of the Constitution. (See Article 2, Section 2.)

Jefferson agreed reluctantly with his advisers and decided to submit the treaty with France to purchase Louisiana to the Senate for ratification. The President justified his action by saying that "the good sense of our country will correct the evil of loose construction when it shall produce ill effects." Ironically, Jefferson -- the champion of strict construction -- had made a major decision based on a broad construction of the Constitution.

An Issue About the Nature of the Federal Union

Before the treaty to purchase Louisiana could become law, the Senators had to ratify it by a 2/3 majority vote. (See Article 2, Section 2 of the Constitution.) And a majority of the House of Representatives had to appropriate the money needed to pay France (Article 1, Section 7).

Members of Congress argued the "pros" and "cons" of the treaty. Most agreed that the Federal government had the constitutional right to purchase Louisiana. However, several members of Congress opposed Article III of the treaty, which said: "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States . . . . " In other words, this part of the treaty implied that new states would be carved out of the Louisiana Territory and admitted to the Federal Union on an equal basis with the other states.

Representative Roger Griswold of Connecticut argued: "A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies and be governed accordingly."

According to Griswold and his followers, the original thirteen states (and other states made from territory belonging to the United States as of 1788, when the Constitution was ratified) should be superior to any territories acquired subsequently by the Federal Government. Griswold was arguing that if the Louisiana Territory were to be purchased, it should be held only as a colony of the United States.

Senator Timothy Pickering of Massachusetts said that new states could not be made from the Louisiana Territory unless every state in the nation agreed. He argued that the Federal Union was a partnership of states, who had created it. Thus, no new states could be admitted to this partnership without the agreement of the other states.

Pickering viewed the Federal Union as if it derived its power primarily from the states instead of the people of the nation as a whole. His idea was more compatible with the nature of the Union under the Articles of Confederation than with the federal system of the Constitution.

A Decision and Its Consequences

Most members of Congress disagreed with Griswold and Pickering. Thus, on October 17, 1803, the Senate ratified Jefferson's treaty by a vote of 24 to 7. A majority in the House of Representatives voted to appropriate the money needed to make the purchase. The money bill was also passed by the Senate. Jefferson was empowered to conclude the deal with France, which he did.

Jefferson explained his deviation from strict construction of the Constitution:

> A strict observance of the written laws is doubtless one of the high duties of a good citizen, but it is not the highest. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.

Later, the President said: "Is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children than by strangers of another family?" Americans responded by moving westward to populate and develop the new territory. Out of it were eventually to be made twelve states: Arkansas, Colorado, Iowa, Kansas, Louisiana, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota and Wyoming.

Through the purchase of Louisiana, the United States became one of the largest nations on earth. Later on, Americans learned that the territory included many acres of fertile soil and other valuable natural resources. Louisiana was a richer prize than most people imagined at that time.

In 1828, the Supreme Court affirmed the constitutional bases of Jefferson's decision to purchase Louisiana. In the case of American Insurance Company v. Canter, Chief Justice Marshall expressed the majority opinion that the Federal Government could acquire new territory under the treaty-making clause of the Constitution.

The Louisiana Purchase was Thomas Jefferson's most important decision as President. He added greatly to the power of the United States. Furthermore, he contributed substantially, though unintentionally, to the position that the Constitution should be interpreted broadly when necessary to serve the public interest.

Reviewing Facts and Ideas

1. Why did President Jefferson want to purchase the region around New Orleans?

2. Why did the President hesitate to accept Napolean's offer to sell the entire Louisiana Territory to the United States? Select one or more of the following answers. Explain your selections.

   a. the price was too high
   b. a majority of citizens opposed the purchase
   c. he was a strict constructionist

3. Why did James Madison believe that the President had a constitutional right to purchase Louisiana?

4. Why did Congressman Griswold oppose the Louisiana Purchase?

5. Why did Senator Pickering oppose the Louisiana Purchase?

6. What reasons did Jefferson use to explain his decision to purchase Louisiana?

7. How did Jefferson's decision to purchase Louisiana shape the meaning of the Constitution?

Interpreting Evidence

1. Refer to the excerpt from Jefferson's letter to Senator Breckinridge on page 367.

   a. Why did Jefferson say that the treaty had to be presented to both Houses of Congress?

   b. Why did Jefferson say that the Constitution needed to be amended?

2. Refer to Jefferson's explanation, page 369, about his deviation from the strict constructionist position.

   a. What is the main idea of this statement?

b. Is this statement an example of the strict constructionist position or the broad constructionist position? Explain.

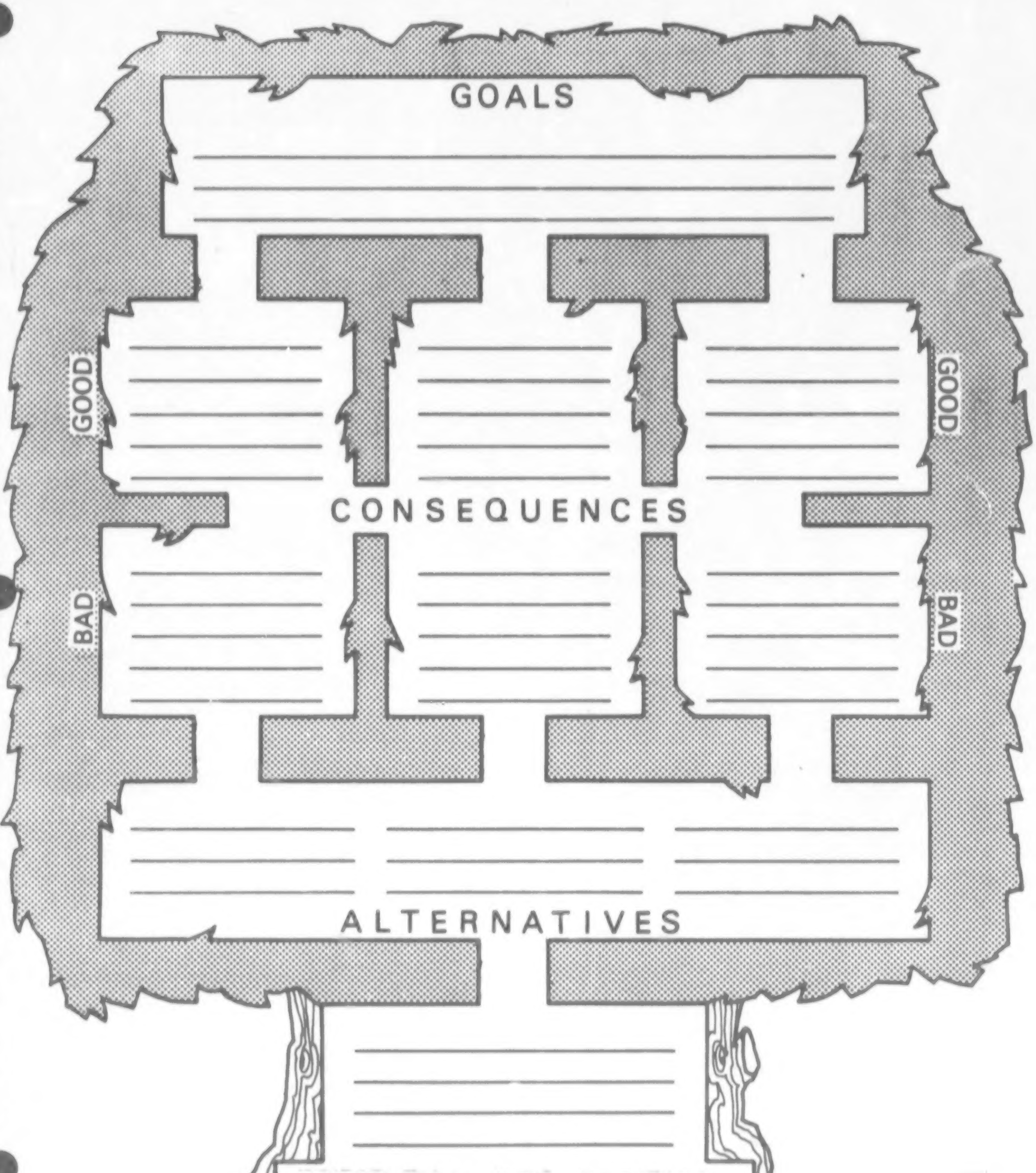
c. Does this statement suggest lack of respect for the Constitution as the supreme law of the land?

d. To what extent do you agree or disagree with this statement?

Decision Making

1. What was Jefferson's occasion for decision in this case?
2. What were the President's alternatives?
3. What were likely consequences (positive and negative) of Jefferson's alternatives?
4. What were the President's goals?
5. Why did the President decide to purchase Louisiana?
6. What is your appraisal of Jefferson's decision? Was it a good decision?

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

IV-7. Stretching the Constitution: Jefferson's Decision to Purchase Louisiana

Preview of Main Points

This lesson is about the constitutional significance of President Jefferson's decision to purchase the Louisiana Territory. Constitutional issues are examined, which pertain to the interpretation of Federal Government powers and the nature of the Federal Union. The effects of Jefferson's decision on constitutional development are assessed.

Connection to Textbooks

American history textbooks discuss the Louisiana Purchase. The issue of constitutional interpretation is raised. This lesson can be used in conjunction with the typical textbook discussion of the Louisiana Purchase. In-depth commentary is provided that can enrich the textbook treatments.

Objectives

Students are expected to:

1. understand how Jefferson was confronted with the decision to purchase Louisiana;
2. comprehend the constitutional issue about strict versus broad construction, which was raised by this decision;
3. comprehend the constitutional issue about the nature of the Federal Union, which was raised by this decision;
4. explain why Jefferson decided to purchase Louisiana;
5. practice skills in analyzing and judging a political decision;
6. practice skills in interpreting evidence in primary source material.

Suggestions or Teaching the Lesson

This is a case study lesson, which provides in-depth information about an important presidential decision. Use questions presented at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening the Lesson

- Inform students about the main points of the lesson.
- Ask them to present their opinions about why the decision to purchase Louisiana was the most important decision of Jefferson's two terms as President. Tell students that they'll have an opportunity to check their opinions against the facts of this case study.

Developing the Lesson

- Have students read the case study.
- Ask them to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.
- Move to consideration of the interpreting evidence questions. Have students review the two excerpts from primary sources, which are mentioned in this activity.
- Conduct a discussion of the questions about interpreting evidence.

Concluding the Lesson

- Have students use a "Decision Tree" chart to help them practice skills in analyzing and judging decisions.
- Divide the class into small groups of five or six members. Tell each group to use the Decision Making questions as guides to completing a Decision Tree about Jefferson's decision in this case.
- Ask one person in each group to be prepared to report the conclusion of the group about Jefferson's decision.
- Have the reporters from each group form a panel to discuss Jefferson's decision in front of the class. Encourage other students to question, criticize or otherwise interact with the panelists.

Suggested Reading

Here are two chapters from outstanding history books, which provide substantial and illuminating discussions of the Louisiana Purchase.

Burns, James MacGregor. The Vineyard of Liberty (New York: Alfred A. Knopf, 1982), pp. 172-182.

Morris, Richard B. Great Presidential Decisions: State Papers That Changed the Course of History (New York: Harper & Row Publishers, Perennial Library, 1973), pp. 56-68.

IV-8. THE COURT AND DEVELOPMENT OF THE COMMERCE POWER

Article II of the Constitution gives Congress the power "to regulate Commerce...among the several states." But what does the term "commerce" mean? Just what can be regulated by Congress as part of its commerce power? Are there circumstances when Congress shares this power with the states?

The Supreme Court's first major decision on the meaning of the commerce power came in a controversy over steamboats. In the early 1800's Robert Fulton developed the steamboat as a practical means of travel. Fulton's smoke-belching invention started a chain of events that led to the case of *Gibbons v. Ogden* (1824).

The Court's decision in that case set a precedent that has been followed in many other Supreme Court decisions ever since. A *precedent* is a judicial decision which judges in later cases will look to for guidance, and follow. Judges pay careful attention to precedents (earlier decisions in similar cases) when making decisions about a court case.

Judges follow a norm called *stare decisis* regarding precedent. *Stare decisis* means "let the decision stand." Judges let the prior line of decisions on a point of law--the precedents--stand, unless there are extraordinary reasons to depart from them.

The precedent set by the Supreme Court decision in the *Gibbons* case was used as the basis for many court decisions in similar cases. (See Table 1 on page 380.) These decisions have allowed Congress to expand greatly the powers of the national government.

Background of the Case

The Hudson River divides the states of New York and New Jersey as it flows to the sea. In 1807 Robert Fulton's steamboat, the *Clermont*, made its first successful trip up the Hudson. The next year the New York legislature gave Fulton and a partner a monopoly to operate steamboats on the river. In turn, the partners gave Aaron Ogden a license to run a steamboat ferry between New York City and New Jersey.

Ogden's business prospered. Then Thomas Gibbons set up a competing line. Gibbons ran his two boats under a license for coastal shipping granted by Congress through a 1798 law. In 1819, Ogden sued Gibbons in a New York state court and won. The court ordered Gibbons to stop operating his steamboat service because it interfered with Ogden's monopoly. Gibbons promptly appealed to the United States Supreme Court.

From the start, public interest in the case was high. By the 1820's, steamboats had become an important means of transportation on the lakes and rivers of the growing nation. Other states beyond New York had begun granting steamboat monopolies. This led to states competing with one another. New Jersey and Ohio closed their waters to boats licensed by the New York monopoly. The navigational chaos that followed brought the states to what one lawyer of the time called "almost...the eve of war."

The "Founding Fathers" had sought to avoid just such problems by giving Congress the constitutional power to "regulate commerce among the several states." In appealing to the Supreme Court, Gibbons pointed out that his federal license should take precedence over Ogden's state-granted license, because the steamboats were engaged in interstate commerce.

In 1824, the Court was ready to hear the case. Thirty-five years after it was established, the Supreme Court was being called upon to give an interpretation of the power of Congress to regulate interstate commerce. Some of the best lawyers in the country prepared to argue the issue before the Court.

Legal Issues

The case involved two key issues. First, what did commerce include? That is, did the commerce clause of the Constitution give Congress the power to regulate navigation? Second, was Congress' power exclusive or did the states along with Congress have some rights to regulate interstate commerce?

Arguments

Daniel Webster presented Gibbon's case. Webster claimed that navigation was indeed commerce. He argued "that the power of Congress to regulate commerce was complete and entire, and...necessarily exclusive."

The attorneys for Ogden argued that commerce should be defined narrowly. They contended that commerce meant only "the transportation and sale of commodities." Navigation was a matter which should be left to the states to regulate.

The Court's Decision

On March 2, 1824, the Court ruled in favor of Gibbons. Chief Justice John Marshall delivered the Court's opinion. Marshall rejected Ogden's argument that commerce should be narrowly defined. "Commerce undoubtedly is traffic," Marshall said, "but it is something more." To Marshall "commerce" included all forms of trade and business "between nations, and parts of nations."

Further, Marshall explained that navigation was clearly a part of commerce. "All America understands," he said, "the word 'commerce' to comprehend navigation." Thus, Congress' power over commerce included navigation.

Marshall, however, clearly did not rule that Congress' power was exclusive. Instead, he said simply that the New York state law violated the federal law under which Gibbons had obtained his license. Thus, the Court left open the question of whether states could regulate areas of commerce Congress had not regulated.

Nor did Marshall resolve the question of whether the states could regulate commerce simultaneously with Congress. Marshall did explain that a state might take actions toward commerce similar to those of Congress. But when a state law interfered with the federal law, the federal law always took precedence. This was why the New York state law was invalid; it interfered with the federal law on coastal ships.

Significance of the Court's Decision

The decision was immensely popular because it killed the steamboat monopolies that people did not like. Few people at the time, however, realized how the decision would add to the growth of the country and the power of the national government.

The Gibbons case spurred the growth of the American economy. When state monopolies ended, steamboat navigation increased tremendously. Soon steam railroads began to cross the country and open up the West. Interstate commerce was freed from state monopolies, which encouraged rapid development of railroads.

Congress did not enact many regulations on commerce until the 20th Century. Thus, during the 1800's, commerce was free to develop without state or national government restraint.

At the same time, the decision opened the door for the vast expansion of national control over commerce that we have today. The Court's broad interpretation of the meaning of "commerce" has enabled Congress to regulate manufacturing, child labor, farm production, wages and hours, labor unions, civil rights and criminal conduct as well as buying and selling. Any activity that affects interstate commerce is now subject to national rather than state control. The commerce power first defined in this case has come to be one of the major constitutional provisions used by Congress to police many areas of American life.

Reviewing the Case

1. Describe the events leading to the *Gibbons* case.
2. What was the issue in the *Gibbons* case? What were the arguments on each side?
3. What did the Court decide?
4. What reasons were given for the decision?
5. What were the long-term effects of the decision?

Interpreting Evidence

The *Gibbons* decision was the first definition of the commerce power. The decision established that Congress had broad powers to regulate commerce affecting more than one state or interstate commerce as it is called. At the same time, the decision did not specify in advance all the possible activities that the power to "regulate" commerce might include. For example, could Congress regulate child labor conditions in factories as part of its commerce power?

The *Gibbons* case also said the term "commerce" included not only "navigation" but also other forms of trade and business. However, the Court could not spell out exactly what these other forms might include. For instance, did "commerce" include coal mining?

Thus, the *Gibbons* decision set *precedent*, but it was left to later Courts to settle such questions on a case-by-case basis. Table 1 (page 380) lists some of the Courts' major decisions on the commerce power in the more than 150 years since *Gibbons v. Ogden*. These decisions show how the Court has further defined Congress' power under the commerce clause. Study the Table and answer these questions:

1. Name two decisions that elaborated upon what the term "commerce" does or does not include.
2. Describe key doctrines announced in the *Swift* and *Shreveport* cases. In what later case were these used as precedent?

3. Name seven decisions that expanded Congress' "police" power under the commerce clause.

4. In which cases did the Court rule Congress could not use the commerce power to regulate child labor? What later case overturned the child labor decision?

5. Historians claim that from the late 1800's to 1937 the Supreme Court followed a very conservative point of view. Thus, the Court often struck down as unconstitutional laws it viewed as interfering with the free operation of business. Identify four cases that support this claim. Explain.

6. Since 1937 what point of view has the Court followed regarding the commerce power? Support your answer with evidence from the Table.

TABLE 1

The Court and Development of the Commerce Power

1888 - *Kidd v. Pearson*

Manufacturing of goods such as liquor is not commerce. Thus, Congress cannot regulate such manufacturing as interstate commerce.

1903 - *Champion v. Ames*

Congress may use its power to regulate commerce to outlaw the interstate sale and shipment of lottery tickets.

1904 - *McCray v. United States*

Congress may regulate the sale of yellow oleo (a butter substitute) by placing a high tax on oleo. This decision, along with *Champion*, strengthened Congress' ability to use the commerce power as a "police" power.

1905 - *Swift and Co. v. United States*

Court announces "stream of commerce" doctrine. The meat packing industry is part of a "stream of commerce" from the time an animal is purchased, on the hoof, until it is processed and sold as meat. Congress could regulate at any point along that "stream."

"Stream of commerce" doctrine became a basic legal concept in the expansion of the federal commerce power.

1908 - *Adair v. United States*

Labor relations do not directly affect interstate commerce. Thus, Congress cannot use the commerce power to prohibit certain kinds of labor contracts.

1910 - *Hammer v. Dagenhart*

Congress may not use the commerce power as police power to regulate working conditions for child laborers.

TABLE 1 (Continued)

The Court and Development of the Commerce Power

1914 - *Shreveport Rate Cases*

Court announces the "Shreveport Doctrine." The federal government has power to regulate rail rates within states (intrastate) as well as between states (interstate).

Sets the key precedent that whenever intrastate and interstate transactions (such as rail rates) become so related that regulation of one involves control of the other, Congress *not* the states has final authority.

1922 - *Bailey v. Drexel Furniture Co*.

Congress may not use its police power to place a high tax on the profits of companies employing child laborers.

This decision along with *Hammer* in 1918 greatly narrowed the federal "police" power. With these two decisions the Court frustrated attempts by Congress to end child labor.

1935 - *Railroad Retirement Board v. Alton Railroad Co*.

The commerce clause does not give Congress the power to set up a pension system for railroad workers.

1936 - *Carter v. Carter Coal Co*.

Mining is not commerce and does not affect commerce directly. Thus, Congress may not regulate labor relations in the coal mining industry.

1937 - *National Labor Relations Board v. Jones & Laughlin Steel Corp*.

Congress may regulate labor relations in manufacturing to prevent possible interference with interstate commerce. This decision overturned the *Adair* and *Carter* decisions.

With this decision the Court gave up the narrow view of Congress' power to regulate commerce it had followed for many years. It based its decision on precedents set in the *Swift* and *Shreveport* cases.

TABLE 1 (Continued)

The Court and Development of the Commerce Power

1939 - *Mulford v. Smith*

The commerce power gives Congress the authority to regulate marketing quotas for agricultural production.

1941 - *United States v. Darby Lumber Co*.

Congress may use commerce power to prohibit from interstate commerce goods made under substandard labor conditions. Overturns *Dagenhart* decision.

1942 - *Wickard v. Filburn*

Congress may regulate agricultural production affecting interstate commerce even if produce is not meant for sale.

1964 - *Heart of Atlanta Motel v. United States*

Congress may use commerce power to prohibit public hotels and motels from discriminating against customers on the basis of race.

1976 - *National League of Cities v. Usery*

Congress cannot use its commerce power to establish wage and hour standards for state and local government employees.

Source: Elden Witt (ed.), *Guide to the U.S. Supreme Court* (Washington, D.C.: Congressional Quarterly, Inc., 1979), p. 94; Paul L. Murphy, private communication.

LESSON PLAN AND NOTES FOR TEACHERS

IV-8. The Court and Development of the Commerce Power

Preview of Main Points

This case study describes the case of Gibbons v. Ogden. The case shows how the powers of Congress to regulate interstate commerce were broadly interpreted by Chief Justice Marshall. Through liberal interpretation of the commerce power this case opened the door for a vast expansion of national control over commerce. An important precedent was set.

Connection to Textbooks

This lesson can be used with government textbook material on the powers of Congress or federalism. It can be used with history textbook discussions of the roots of American economic growth starting in the 1820's or with discussions of the Marshall Court. The lesson provides a more in-depth look at the issues and judicial reasoning involved in the development of the commerce power.

Objectives

Students are expected to:

1. explain the circumstances leading up to the Gibbons case;
2. identify the key participants and constitutional issues involved in the Gibbons case;
3. identify the arguments presented by both sides in the case;
4. explain the immediate effect of the decision on the growth of commerce in the United States;
5. explain the long-term significance of the Court's decision for the growth of Congressional power to regulate commerce;
6. use evidence in a table to draw conclusions about the growth of Congressional powers to regulate commerce.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" case-study to accompany textbook discussions of Congress' commerce power, American economic growth or the Marshall Court.

Opening The Lesson

- Preview the main parts of the Lesson for students.
- Explain how this lesson is connected to the material they have just studied in the textbook.

Developing The Lesson

- Have students read the case-study.
- Conduct a discussion of the questions under "Reviewing the Case" to make sure students have understood the main ideas.

Concluding The Lesson

- Go over Table 1 with the students. Help them to comprehend the meaning of each item in the Table.
- Have students follow the instructions under "Interpreting Evidence." Use the Answer Sheet on the next page to provide "feedback" to students during and after their discussion of the questions in the section on "Interpreting Evidence."

Suggested Reading

Baxter, Maurice G. The Steamboat Monopoly: Gibbons v. Ogden, 1824 (Philadelphia: Philadelphia Book Co., 1972).

Answer Sheet for Interpreting Evidence

1. Kidd v. Pearson; Carter v. Carter Coal Co.

2. Swift, "stream of commerce" doctrine; Shreveport, the "Shreveport Doctrine." National Labor Relations Board v. Jones & Laughlin Steel Corp.

3. Champion v. Ames; McCray v. United States; National Labor Relations Board v. Jones & Laughlin; Milford v. Smith; United States v. Darby Lumber Co.; Wickard v. Filburn; Heart of Atlanta v. United States.

4. In Hammer v. Dagenhart and Bailey v. Drexel the Court struck down attempts to limit child labor. United States v. Darby overthrew these two cases.

5. Hammer v. Dagenhart; Bailey v. Drexel; Railroad Retirement Board v. Alton Railroad Co.; Carter v. Carter Coal Co. In these cases the Court turned back government efforts to regulate or become more involved in the affairs of private business.

6. The Court has consistently expanded Congress' commerce power. Five out of the six cases since 1937 have increased Congress' power or expanded the meaning of "commerce."

IV-9. TWO RESPONSES TO A CONSTITUTIONAL CRISIS: DECISIONS OF BUCHANAN AND LINCOLN ABOUT SECESSION

"LINCOLN ELECTED PRESIDENT" was the headline in American newspapers on November 6, 1860. Abraham Lincoln's election signaled a constitutional crisis. Leaders in several southern states threatened to secede, or withdraw, from the Federal Union.

Buchanan's Decision About a Constitutional Crisis

Lincoln would not take office until March 4, 1861. Thus, the outgoing President, James Buchanan, was faced with the problem of secession during the four months that intervened between Lincoln's election in November and his inauguration in March. On December 3, 1860, President Buchanan delivered his last annual message to Congress. He reported his decision on how the federal government should respond to secession by one or more of the states.

FOURTH ANNUAL MESSAGE

Washington City
December 3, 1860

Fellow-Citizens of the Senate and House of Representatives:

...it is beyond the power of any President, no matter what may be his own political proclivities, to restore peace and harmony among the States. Wisely limited and restrained as is his power under our Constitution and laws, he alone can accomplish but little for good or for evil on such a momentous question....

The question fairly stated is, Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw or has actually withdrawn from the Confederacy [Federal Union]? If answered in the affirmative, it must be on the principle that the power has been conferred upon Congress to declare and to make war against a State. After much serious reflection I have arrived at the conclusion that no such power has been delegated to Congress or to any other department of the Federal Government. It is manifest upon an inspection of the Constitution that this is not among the specific and enumerated powers granted to Congress, and it is equally apparent that its exercise is not "necessary and proper for carrying into execution" any one of these powers....

Without descending to particulars, it may be safely asserted that the power to make war against a State is at variance with the whole spirit and intent of the Constitution....

The fact is that our Union rests upon public opinion, and can never be cemented by the blood of its citizens shed in civil war. If it can not live in the affections of the people, it must one day perish. Congress possesses many means of preserving it by conciliation, but the sword was not placed in their hand to preserve it by force.

But may I be permitted solemnly to invoke my countrymen *to pause and deliberate before they determine to destroy this* the grandest temple which has ever been dedicated to human freedom since the world began?...

Congress can contribute much to avert it by proposing and recommending to the legislatures of the several States the remedy for existing evils which the Constitution has itself provided for its own preservation. This has been tried at different critical periods of our history, and always with eminent success. It is to be found in the fifth article, providing for its own amendment. Under this article amendments have been proposed by two-thirds of both Houses of Congress, and have been "ratified by the legislatures of three-fourths of the several States," and have consequently become parts of the Constitution....

This is the very course which I earnestly recommend in order to obtain an "explanatory amendment" of the Constitution on the subject of slavery. This might originate with Congress or the State legislatures, as may be deemed most advisable to attain the object. The explanatory amendment might be confined to the final settlement of the true construction of the Constitution on three special points:

1. An express recognition of the right of property in slaves in the States where it now exists or may hereafter exist.

2. The duty of protecting this right in all the common Territories throughout their Territorial existence, and until they shall be admitted as States into the Union, with or without slavery, as their constitutions may prescribe.

3. A like recognition of the right of the master to have his slave who has escaped from one State to another restored and "delivered up" to him, and of the validity of the fugitive-slave law enacted for this purpose....

...Such an explanatory amendment would, it is believed, forever terminate the existing dissensions, and restore peace and harmony among the States.

> It ought not to be doubted that such an appeal to the arbitrament established by the Constitution itself would be received with favor by all the States of the Confederacy. In any event, it ought to be tried in a spirit of conciliation before any of these States shall separate themselves from the Union....

Lincoln's Decision About a Constitutional Crisis

On December 20, seventeen days after President Buchanan's speech, the state government of South Carolina declared its secession from the Federal Union. In line with the ideas in his speech, President Buchanan did nothing to oppose South Carolina. During the next few weeks, six more southern states seceded: Florida, Georgia, Alabama, Mississippi, Texas, and Louisiana. By March 3, 1861--Lincoln's inauguration day--the Federal Union was in grave danger. Lincoln announced his decision about how the Federal Government should respond to the constitutional crisis.

FIRST INAUGURAL ADDRESS

It is seventy-two years since the first inauguration of a President under our National Constitution. During that period fifteen different and greatly distinguished citizens have in succession administered the executive branch of the Government. They have conducted it through many perils, and generally with great success. Yet, with all this scope of precedent, I now enter upon the same task for the brief constitutional term of four years under great and peculiar difficulty. A disruption of the Federal Union, heretofore only menaced, is now formidably attempted.

I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.

Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate it--break it, so to speak--but does it not require all to lawfully rescind it?...

It follows from these views that no State upon its own mere motion can lawfully get out of the Union; that resolves and ordinances to that effect are legally void, and that acts of violence within any State or States against the authority of the United States are insurrectionary or revolutionary, according to circumstances.

I therefore consider that in view of the Constitution and the laws the Union is unbroken, and to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part, and I shall perform it so far as practicable unless my rightful masters, the American people, shall withhold the requisite means or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but only as the declared purpose of the Union that it will constitutionally defend and maintain itself....

Plainly the central idea of secession is the essence of anarchy. A majority held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism. Unanimity is impossible. The rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left....

In your hands, my dissatisfied fellow-countrymen, and not in mine, is the momentous issue of civil war. The Government will not assail you. You can have no conflict without being yourselves the aggressors. You have no oath registered in heaven to destroy the Government, while I shall have the most solemn one to "preserve, protect, and defend it."

I am loath to close. We are not enemies, but friends. We must not be enemies. Though passion may have strained it must not break our bonds of affection. The mystic chords of memory, stretching from every battlefield and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched, as surely they will be, by the better angels of our nature.

March 4, 1861

Several state governments of the South persisted in their decisions to secede. They formed a new nation, the Confederate States of America (CSA). The preamble to the Constitution of the CSA stated:

> We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity--invoking the favor and guidance of Almighty God--do ordain and establish this Constitution for the Confederate States of America.

The CSA claimed and occupied territory belonging to the Federal Government of the United States. This lead to armed conflict at Ft. Sumter, South Carolina--April 14, 1861--between forces of the CSA and USA. Next day President Lincoln issued this proclamation.

By the President of the United States

A PROCLAMATION

Whereas the laws of the United States have been for some time past and now are opposed and the execution thereof obstructed in the States of South Carolina, Georgia, Alabama, Florida, Mississippi, Lousiana, and Texas by combinations too powerful to be suppressed by the ordinary course of judicial proceedings or by the powers vested in the marshals by law:

Now, therefore, I, Abraham Lincoln, President of the United States, in virtue of the power in me vested by the Constitution and the laws, have thought fit to call forth, and hereby do call forth the militia of the several States of the Union to the aggregate number of 75,000, in order to suppress said combinations and to cause the laws to be duly executed.

The details for this object will be immediately communicated to the State authorities through the War Department.

I appeal to all loyal citizens to favor, facilitate, and aid this effort to maintain the honor, the integrity, and the existence of our National Union and the perpetuity of popular government and to redress wrongs already long enough endured.

I deem it proper to say that the first service assigned to the forces hereby called forth will probably be to repossess the forts, places, and property which have been seized from the Union; and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens in any part of the country.

And I hereby command the persons composing the combinations aforesaid to disperse and retire peaceably to their respective abodes within twenty days from this date.

Deeming that the present condition of public affairs presents an extraordinary occasion, I do hereby, in virtue of the power in me vested by the Constitution, convene both Houses of Congress. Senators and Representatives are therefore summoned to assemble at their respective chambers at 12 o'clock noon on Thursday, the 4th day of July next, then and there to consider and determine such measures as, in their wisdom, the public safety and interest may seem to demand.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington, this 15th day of April, A.D. 1861, and of the Independence of the United States the eighty-fifth.

[SEAL]

Abraham Lincoln

By the President:

William H. Seward, Secretary of State

Interpreting Evidence in Documents

1. Examine the Preamble to the Constitution of the CSA. Compare it to the Preamble of the Constitution of the USA. Then answer these questions:
   a. What is the main difference in the two Preambles?
   b. What two different views of the powers of state governments in the Federal Union are revealed by the two Preambles?
   c. What do the differences in the two Preambles tell us about one of the causes of the Civil War?
2. Review President Buchanan's Message to Congress to find answers to these questions.

   a. What was the critical constitutional issue facing President Buchanan?

   b. According to President Buchanan, what were his powers and duties, under the Constitution, in dealing with the critical issue facing him?

   c. What did President Buchanan propose should be done to settle the critical constitutional issue facing him? Why?

3. Review President Lincoln's First Inaugural Address to find answers to these questions.

   a. What was the critical issue facing Abraham Lincoln as he entered the presidency?

   b. According to President Lincoln, what were his powers and duties, under the Constitution, in dealing with the critical issue facing him? Why?

   c. What did President Lincoln propose should be done to settle the critical constitutional issue facing him? Why?

4. Review President Lincoln's Proclamation of April 15, 1861, to find answers to these questions.

   a. What was the main idea of the President's Proclamation?

   b. Why did the President take the actions described in his Proclamation?

   c. Were the President's actions in line with the Constitution? Or did they violate it?

Comparing the Decisions of Buchanan and Lincoln

Use the Decision Tree on page 394 to help you answer the following questions.

1. a. What was the occasion for decision facing President Buchanan in December 1860?

   b. What was the occasion for decision facing President Lincoln in March 1861?

   c. What were similarities and differences in the occasions for decision facing the two Presidents?

2. a. What alternatives were identified by Buchanan?

   b. What alternatives were identified by Lincoln?

c. What were similarities and differences in the alternatives perceived by Buchanan and Lincoln?

3. a. Which alternative did Buchanan choose? Why?

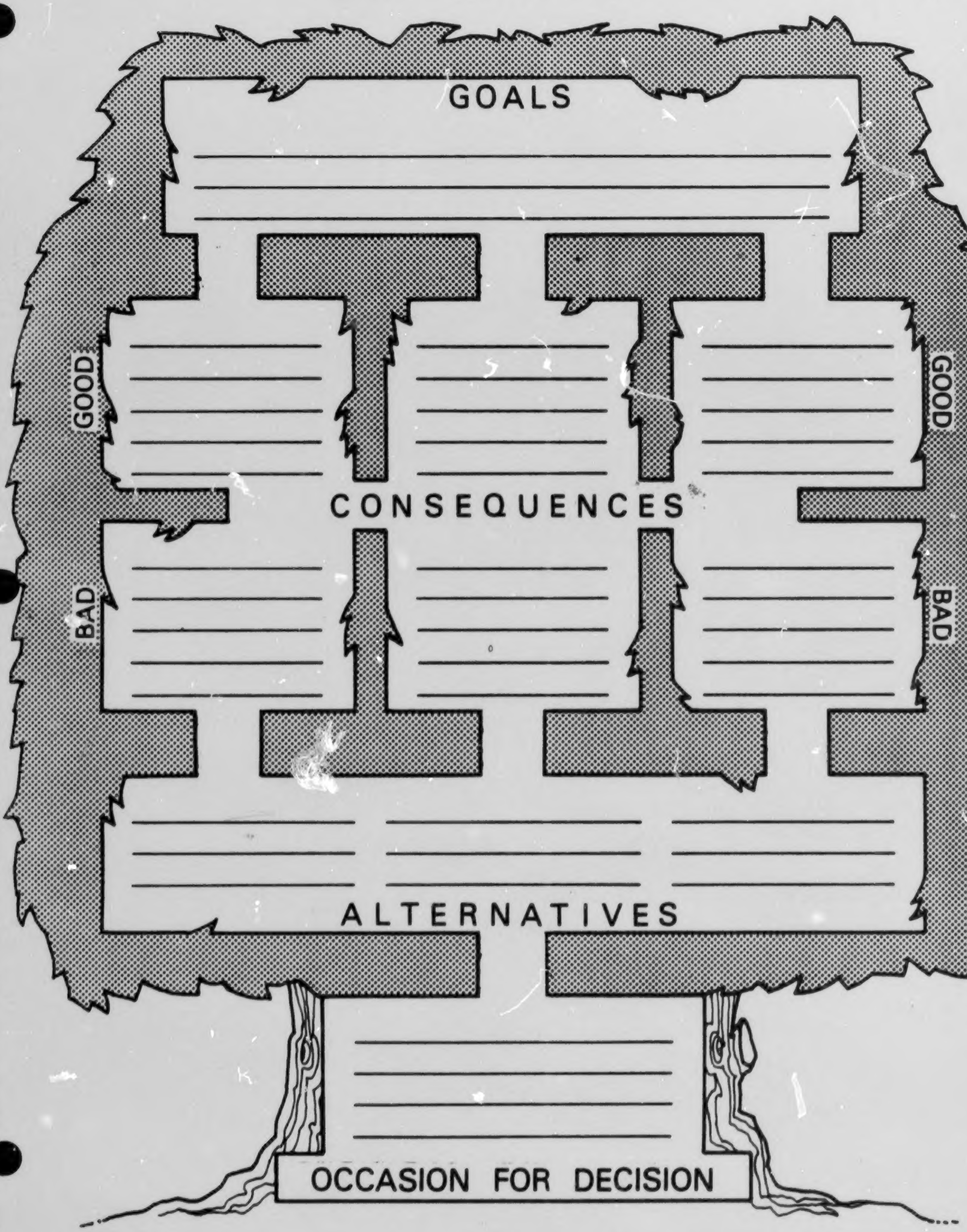
   b. Which alternative did Lincoln choose? Why?

   c. Compare the choices of Buchanan and Lincoln. What was similar or different about the choices and their consequences?

4. a. What is your judgment of Buchanan's decision? Why?

   b. What is your judgment of Lincoln's decision? Why?

DECISION TREE


GOALS
GOOD
GOOD
CONSEQUENCES
BAD
BAD
ALTERNATIVES
OCCASION FOR DECISION

The decision-tree device was developed by Roger LaRaus and Richard C. Remy and is used with their permission.

LESSON PLAN AND NOTES FOR TEACHERS

IV-9. Two Responses to a Constitutional Crisis: Decisions of Buchanan and Lincoln About Secession

Preview of Main Points

This lesson highlights statements of two Presidents--Buchanan and Lincoln--about the constitutional crisis of secession by the southern states. Buchanan and Lincoln responded quite differently. Both Presidents believed that secession was illegal. However, Buchanan seemed to believe that the federal government could do nothing about it. In contrast, Lincoln believed it was his duty as President to act forcefully, if necessary, to defend the Constitution and preserve the Union. The contrasting responses of Buchanan and Lincoln to the crisis of secession reveal contrasting interpretations of the Constitution and the consequences of those different views.

Connection to Textbooks

This lesson fits history textbook chapters on the Civil War. It can be used with government textbook chapters on the presidency, since it presents contrasting views about the constitutional powers of the President.

Objectives

Students are expected to:

1. identify and explain the conflicting views of the nature of the Federal Union, which was a main cause of secession;
2. identify and explain the constitutional bases of President Buchanan's response to the threat of secession;
3. identify and explain the constitutional bases of President Lincoln's response to the fact of secession by several southern states;
4. compare the responses of Buchanan and Lincoln to the constitutional crisis represented by secession;
5. analyze comparatively the decisions made by Buchanan and Lincoln about the issue of secession;
6. practice skills in using evidence in documents to answer questions about constitutional history.

Suggestions for Teaching the Lesson

This lesson might be used in a history course as part of an introduction to the study of the Civil War. Or it might be used in a government course as a "springboard" into examination of how different Presidents have viewed the powers and duties of their office.

Opening the Lesson

- Begin by previewing the main points of the lesson for students. This provides students with advanced notice of the material they are to read.

- Ask students to speculate about responses that a President might and/or should make to the threat of secession. This speculative discussion can serve as a back-drop and warm-up for comparative examination of the responses of two Presidents--Buchanan and Lincoln--to the constitutional crisis of secession.

Developing the Lesson

- Have students read the materials in this lesson. Focus their attention on four documents: the Fourth Annual Message to Congress of President Buchanan, the First Inaugural Address of President Lincoln, the Proclamation of President Lincoln, and the Preamble to the Constitution of the Confederate States of America.

- Have students respond to the questions requiring them to interpret evidence in the four documents listed above.

Concluding the Lesson

- Have students respond to the questions asking them to compare the decisions of Buchanan and Lincoln. Duplicate and distribute two copies of the Decision Tree for each student in the class. These Decision Trees can be used as a guide to the comparative analysis of the decisions of Buchanan and Lincoln about the crisis represented by secession.

- Have students make judgments about the decisions of Buchanan and Lincoln in terms of consequences and values.

- As an additional activity, you might want to have students examine and interpret the response of President Jefferson Davis to the forceful actions of President Lincoln to stop secession. To carry out this activity duplicate and distribute a copy of the document on page 399, Jefferson Davis' Message to the Congress of the CSA. Use these questions as a guide to the analysis and discussion of this document.

(1) What were Jefferson Davis' views about the power that state governments ought to have within a Federal Union? (Compare these ideas to those of the Anti-Federalists during the debates about ratification of the Constitution.)

(2) According to Davis, what were the constitutional bases for secession? (How did the northern states abuse the Constitution so as to cause the southern states to withdraw from the Federal Union?)

(3) Why did Davis believe that the southern states had the right to secede and form their own confederation?

(4) What were differences in the views of Davis and Lincoln about the powers of state governments under the Constitution of the USA?

(5) What does Davis' speech reveal about causes of the Civil War?

Suggested Readings

Morris, Richard B. Great Presidential Decisions (New York: Harper & Row Publishers, Perennial Library Edition, 1973), pp. 213-250.

The decisions of Buchanan and Lincoln about secession are discussed with reference to state papers that were issued to explain and justify these decisions.

Kelly, Alfred H., and Harbison, Winfred H. The American Constitution: Its Origins and Development (New York: W. W. Norton & Company, 1976), pp. 354-381.

These pages treat the constitutional crisis brought about by the issue of secession by the southern states. The period from 1851-1861 is treated.

Suggested Films

THE CIVIL WAR: THE ANGUISH OF EMANCIPATION

The film borrows dialogue from speeches and written records to dramatize Lincoln's personal struggle to ensure the preservation of the Union and uphold the Constitution, while simultaneously striking a blow at slavery. It shows the horror and futility of war as a means to resolve political disputes, and reveals how emancipation was determined more by military necessity than moral imperatives. Learning Corporation of America, 1972, 28 minutes.

STATES' RIGHTS

The 1832 confrontation between President Jackson and John C. Calhoun over a tariff law favoring the industrial North to the detriment of southern cotton growers is dramatized in this film. The threat of South Carolina's secession from the Union raises the issue of the rights of a state to refuse to obey a national law. From the HISTORY ALIVE series, TW Productions/Walt Disney Productions, 1970, 14 minutes.

MESSAGE TO THE CONGRESS
OF THE
CONFEDERATE STATES OF AMERICA

April 29, 1861

Gentlemen of the Congress....

The declaration of war made against this Confederacy by Abraham Lincoln, the President of the United States, in his proclamation issued on the 15th day of the present month, rendered it necessary, in my judgment, that you should convene at the earliest practicable moment to devise the measures necessary for the defense of the country. The occasion is indeed an extraordinary one. It justifies me in a brief review of the relations heretofore existing between us and the States which now unite in warfare against us....

...The Constitution of 1787, having however, omitted the clause...from the Articles of Confederation, which provided in explicit terms that each State *retained* its sovereignty and independence, some alarm was *felt* in the States, when invited to ratify the Constitution, lest this omission should be construed into an abandonment of their cherished principle, and they refused to be satisfied until amendments were added to the Constitution placing beyond any pretense of doubt the reservation by the States of all their sovereign rights and powers not expressly delegated to the United States by the Constitution.

Strange, indeed, must it appear to the impartial observer, but it is none the less true that all these carefully worded clauses proved unavailing to prevent the rise and growth in the Northern States of a political school which has persistently claimed that the government thus formed was not a compact *between* States, but was in effect a national government, set up *above* and *over* the States. An organization created by the States to secure the blessings of liberty and independence against *foreign* aggression, has been gradually perverted into a machine for their control in their *domestic* affairs. The *creature* has been exalted above its *creators*; the *principals* have been made subordinate to the *agent* appointed by themselves. The people of the Southern States, whose almost exclusive occupation was agriculture, early perceived a tendency in the Northern States to render the common government subservient to their own purposes by imposing burdens on commerce as a protection to their manufacturing and shipping interests.... By degrees, as the Northern States gained preponderance in the National Congress, self-interest taught their people to yield ready assent to any plausible advocacy of their right as a majority to govern the minority without control. They learned to listen with impatience to the suggestion of any constitutional impediment to the exercise of their will, and so utterly have the principles of the Constitution been corrupted in the Northern mind that, in the inaugural address delivered by President Lincoln in March last, he asserts as an axiom, which he plainly deems to be undeniable, that the theory of the Constitution requires that in all cases the majority shall govern;... This is the lamentable and fundamental error on which rests the policy that has culminated in his declaration of war against these Confederate States....

...the transaction of public affairs was impeded by repeated efforts to usurp powers not delegated by the Constitution for the purpose of impairing the security of property in slaves, and reducing those States which held slaves to a condition of inferiority....

...In the exercise of a right so ancient, so well-established, and so necessary for self-preservation, the people of the Confederate States, in their conventions, determined that the wrongs which they had suffered and the evils with which they were menaced required that they should revoke the delegation of powers to the Federal Government which they had ratified in their several conventions. They consequently passed ordinances resuming all their rights as sovereign and independent States and dissolved their connection with the other States of the Union.

Having done this, they proceeded to form a new compact amongst themselves by new articles of confederation, which have been also ratified by the conventions of the several States with an approach to unanimity far exceeding that of the conventions which adopted the Constitution of 1787. They have organized their new Government in all its departments; the functions of the executive, legislative, and judicial magistrates are performed in accordance with the will of the people, as displayed not merely in a cheerful acquiescence, but in the enthusiastic support of the Government thus established by themselves; and but for the interference of the Government of the United States in this legitimate exercise of the right of a people to self-government, peace, happiness, and prosperity would now smile on our land....

Jefferson Davis

IV-10. PATHWAY TO JUDGMENT: NEAR V. MINNESOTA (1931)

The Supreme Court is a busy place. The Court receives nearly 5,000 requests a year to review the decisions of lower courts. Each year the Court will accept for decision about 450 of the requests. However, less than 200 of these cases receive a full hearing and a written opinion from the high Court. A smaller number yet of the cases getting the full treatment involve the most basic constitutional questions, whose outcome may shape the course of American life for generations.

Where do these major cases come from? How does a dispute that can shape the meaning of the Constitution get to the Supreme Court? What is the pathway to judgment?

This lesson is a case study of how one major case started and reached the Supreme Court. The case, Near v. Minnesota, involved a small newspaper widely recognized as a scandal sheet, a future governor of Minnesota, two publishers -- one a millionaire and the other a pauper -- and the First Amendment to the Constitution.

The case study illustrates characteristics most major cases heard by the Supreme Court have in common.

1. Major cases involve a basic constitutional question affecting the whole nation.
2. Major cases involve a real conflict between two parties over a specific issue or problem.
3. Major cases may take several years to resolve from the time the conflict first arises to the time the Supreme Court issues a decision.
4. Major cases, with rare exception, are appealed from the decision of a lower court.
5. Major cases involve various types of people. Some are model citizens acting from a sense of civic duty; others are less reputable characters. As one Justice put it, some of our most treasured safeguards in the Bill of Rights have been "forged in controversies involving not very nice people."

Background: A "Gag Law" Is Passed

The times were in turmoil. Duluth, Minnesota, at the southern end of the Mesabi Range with its vast deposits of iron ore was crowded with speculators and prospectors in the early

Twentieth Century. Immigrants came to work the ore deposits. Many were illiterate. Crooked politicians forced them to mark ballots as they were told. Houses of prostitution and gambling dens flourished, and alliances sprang up between lawmakers and lawbreakers.

John Morrison's *Rip-saw* was a sometimes weekly Saturday morning paper. He had started the paper in 1917, dedicating it to fighting the underworld and corrupt government officials. In October, 1924, the *Rip-saw* viciously attacked several Minnesota politicians. Eventually they had enough. The Minnesota legislature passed the Public Nuisance Law of 1925. This law permitted a single judge acting without a jury to stop a newspaper or magazine from publication, if it was found to be "obscene, lewd, and lascivious . . . or malicious, scandalous and defamatory." The goal of the law was to close down the *Rip-saw*. It was supported, however, by some of the major newspapers of the state. They said their reason was to protect the rights of responsible publishers.

The Public Nuisance Law was known popularly as a "gag law." Legally, the law authorized a form of censorship called *prior restraint*. Prior restraint involves government officials restricting a newspaper or magazine in advance from publishing materials of which they disapprove.

The Near Case Begins

In the 1920's, Minneapolis had become a crossroads in the illegal Canadian liquor trade. Ordinary people went about their business leaving law enforcement and the running of the city to corrupt politicians and gangsters. Besides gambling and illegal booze, there were numerous gang killings. Respectable newspapers looked with partly closed eyes at the association between the law-breakers and law enforcement officials.

In 1927, Jay Near and Howard Guilford established the *Saturday Press* in Minneapolis. Near was an experienced journalist with a reputation for being prejudiced against Catholics, blacks, Jews and organized labor. His speciality was reporting scandals in a sensational manner.

From its first issue, the *Saturday Press* hammered away at supposed ties between gangsters and police with a series of sensational stories. The paper especially was tough on city and county government officials.

Among these officials was the county prosecutor, Floyd Olson. Olson was later to become a three-term Minnesota governor. The *Saturday Press* called him "Jew lover" Olson. It claimed he was dragging his feet in the investigation of gangland pursuits. Olson was enraged. On November 21, 1927 he filed a complaint under the Public Nuisance Law of 1925 with the county district judge. Olson charged that the Saturday Press had defamed various politicians, the county grand jury and the entire Jewish community.

The county judge issued a temporary restraining order against the Saturday Press. This order prohibited publication of the paper under the Public Nuisance Law of 1925. Near and Guilford obeyed the order but claimed it was unconstitutional. The county judge rejected their claim but did certify they could appeal the restraining order. In most states, such an appeal would go first to a state appeals court and then to a state supreme court if necessary. In Minnesota, however, the case went directly to the Minnesota Supreme Court.

The Case Moves Through The Minnesota Courts

Near and Guilford had little money to pursue their legal battle. The temporary restraining order would keep their paper off the streets until their appeal was settled. The publishers finally did get some legal help, however, from a local attorney who believed in their cause.

The Minnesota Supreme Court. On April 28, 1928 -- more than three months after the temporary restraining order was issued -- the Minnesota Supreme Court heard their appeal.

The publishers argued that the Public Nuisance Law violated the entire concept of freedom of the press as guaranteed by the First Amendment. That Amendment says: "Congress shall make no law . . . abridging the freedom . . . of the press."

Because of the nature of the appeal, however, the Minnesota Supreme Court could only decide whether the state legislature had violated the Minnesota Constitution when it passed the Public Nuisance Law. If that law was judged to be constitutional, the case would be sent back to the county court. The county judge would then decide whether the Saturday Press had violated the Public Nuisance Law. If so, the county judge could make his temporary restraining order permanent and the Saturday Press would be out of business.

The Supreme Court ruled the Public Nuisance Law did not violate the Minnesota Constitution. The Court compared the Saturday Press to "houses of prostitution or noxious weeds." It asserted that the legislature had the power to do away with such nuisances. In Minnesota, the court argued, no one can stifle the truthful voice of the press, but the constitution was never intended to protect "malice, scandal and defamation." The case would return to the county court.

Back to the County Court. Six months later, on October 10, 1928, the county judge held his hearing on whether the temporary restraining order should be made permanent. It was little more than a formality. Near's attorney used the same arguments as before. Prosecutor Olson simply offered as evidence nine copies of the Saturday Press. The judge issued a permanent injunction three months later. He said he had no choice but to follow the state Supreme Court's conclusion that the Public Nuisance Law was constitutional. So not quite one year after the temporary restraining order was first issued, the Saturday Press was closed down for good under the Minnesota "gag law."

An Important Ally. While these legal maneuverings were going on, two things happened. First, Howard Guilford, Near's partner, withdrew from the legal battle. Guilford had become impatient with the slow legal process and constitutional arguments. He sold his interest in the paper to Near.

More importantly, Near recruited a rich and powerful ally to his cause. This was "Colonel" Robert McCormick, publisher of the Chicago Tribune. Near had written to McCormick asking for financial and legal help. McCormick, like Near, was known for his strong prejudices. He used derogatory terms for blacks freely and sometimes made fun of Jews in public.

McCormick was inclined to sympathize with Near. He had numerous legal battles of his own as publisher of the Chicago Tribune. Certainly McCormick did not want the Minnesota "gag law" copied in Illinois. Whether for personal reasons or because of high constitutional ideals, McCormick was a fighter for the First Amendment. Near wanted his little paper back in business. McCormick wanted a free press.

McCormick committed the Tribune's full resources to the case. His attorney would represent Near before the Minnesota Supreme Court next time around.

Final Steps In Minnesota. McCormick's original intention was to appeal directly to the United States Supreme Court. But there was one more step to be taken in Minnesota before that body would consider the case. The county judge's second opinion, that Near had violated the Public Nuisance Law, had to be appealed. So again Near went to the state's highest court.

There was little doubt that the justices would uphold the county court. They had already declared the Public Nuisance Law constitutional. McCormick's law firm was not concerned with winning in the Minnesota courts. It was heading for the United States Supreme Court.

Soon the Minnesota Supreme Court reasserted that the Saturday Press was a public nuisance. The justices did say the defendants could publish a newspaper "in harmony with the public welfare. . ." But such a paper would hardly be the Saturday Press.

One Additional Ally. Before going to the Supreme Court, McCormick sought to strengthen Near's case by having the formal support of the American Newspaper Publishers Association (ANPA). ANPA members represented more than 250 newspapers across the country. On April 24, 1930 ANPA came out in support of Near. The Association made a public statement declaring the Minnesota law "one of the gravest assaults upon the liberties of the people that has been attempted since the adoption of the Constitution."

The ANPA statement stimulated editorials in many leading newspapers attacking the Minnesota law. The New York Times, for example, called the statute "a vicious law."

So the stage finally was set for Near, with McCormick's help, to bring his case to the U.S. Supreme Court. There was little question the Supreme Court would take the case. Under federal law, the Court was required to consider cases that upheld state laws while denying constitutional rights, such as freedom of the press.

On April 26, 1930, twenty-six months after the first restraining order against Near, the U.S. Supreme Court notified the Minnisota Supreme Court that it would hear the case of Near v. Minnesota.

The Supreme Court Decides

For the first time in its history, the Supreme Court would hear a freedom-of-the-press case involving prior restraint. Oral arguments in the Near case were scheduled for January 30, 1931. Neither Jay Near nor "Colonel" McCormick would be present, but McCormick's attorney was ready, as were attorneys for the state of Minnesota.

Arguments. Near's attorney claimed that the Minnesota Public Nuisance Law allowed prior restraint and thus violated the First and Fourteenth Amendments. Freedom of the press, he argued, was a fundamental right guaranteed by the Constitution. No state could take the right away through prior restraint.

Near's attorney admitted that the Saturday Press article was "defamatory" (highly critical of government officials). But, he added, "So long as men do evil, so long will newspapers publish defamation." The attorney argued that, "Every person does have a constitutional right to publish malicious, scandalous and defamatory matter, though untrue and with bad motives, and for unjustifiable ends." Such a person could be punished afterwards. The remedy, then, was not censorship of an offending newspaper by prior restraint. Rather, the state should bring specific criminal charges against such a newspaper after the material was published.

Minnesota argued that the Public Nuisance Law was constitutional and that the injunction against the Saturday Press was not a prior restraint. The injunction was issued only after the Saturday Press had attacked the reputations of public officials. Thus, it was punishment for an offense already committed. The Constitution was designed to protect individual freedoms, not to serve the purposes of wrong-doers, such as Near and his scandalous Saturday Press.

The Decision. On June 1, 1931, the Supreme Court ruled in favor of Near by a vote of 5 to 4. The Court held that the Minnesota law was a prior restraint on the press and violated the First Amendment and the "due process" clause of the 14th Amendment.

Chief Justice Charles Evans Hughes wrote the majority opinion. Hughes declared the Minnesota law was "the essence of censorship." He said that libel laws, not closing down newspapers, were the answer to false charges and character assassinations. He emphasized that the right to criticize government officials was one of the foundations of the American nation.

Jay Near had lost his four contests in the Minnesota state courts. But he had won the one that counted--before the U.S. Supreme Court.

As a result of Near v. Minnesota, the United States has built a tradition against prior restraints unlike any other in the world. This tradition has helped keep the press free from censorship by government officials merely because it is critical of them.

In 1971 the precedent set in the Near case was relied on heavily by the Supreme Court in the so-called "Pentagon Papers" case (New York Times v. United States). In that case the federal government attempted to stop publication by the New York Times of secret documents describing the history of the involvement of the United States in the Vietnam War. The Court ruled against the government and permitted publication of the documents.

Aftermath

Jay Near was triumphant when he learned of the Court's verdict. In October 1932 Near began to publish the *Saturday Press* again. The paper, however, did not survive long, and in April 1936 Near died in obscurity at the age of 62.

Colonel McCormick was also pleased with the Court's ruling. On the same day, he wrote Chief Justice Hughes: "I think your decision in the Gag Law case will forever remain one of the buttresses of free government."

Only McCormick's *Chicago Tribune* took more than passing note of Near's death. Under the headline: "EDITOR J. NEAR DIES IN MINNESOTA: FOE OF GOVERNOR OLSON AND CRIME," the Colonel's paper praised Near, as well as its own efforts, in bringing a landmark case to the nation's highest court.

Reviewing Facts and Ideas

1. Match the items in Column B with the names in Column A.

	A		B
____ 1.	John Morrison	A.	Publisher whose newspaper was suppressed by Minnesota law
____ 2.	Jay M. Near	B.	Jay Near's partner
____ 3.	Floyd Olson	C.	Chief Justice of the U.S. Supreme Court
____ 4.	Howard Guilford	D.	Publisher of the *Rip-saw*
____ 5.	Robert McCormick	E.	Publisher of the *Chicago Tribune*
____ 6.	Charles Evans Hughes	F.	County prosecutor who filed complaint against the *Saturday Press*

2. True or False? (Be prepared to explain your choices.)

a. Prior restraint is protected by the First Amendment.

TRUE FALSE

b. The Minnesota Public Nuisance Law authorized judges to engage in prior restraint.

TRUE FALSE

c. Jay Near claimed the Minnesota Law violated the 5th Amendment.

TRUE FALSE

d. The Minnesota Supreme Court ruled the Public Nuisance Law violated the U.S. Constitution.

TRUE FALSE

e. A county judge issued the temporary restraining order against the Saturday Press.

TRUE FALSE

f. The U.S. Supreme Court upheld the Minnesota Law as constitutional.

TRUE FALSE

3. What led county prosecutor Olson to file a complaint against the Saturday Press?

4. What action did the county district judge take in response to Olson's complaint? What reason did the judge give for his action?

5. Why was Robert McCormick interested in the case?

6. What were the arguments of the two sides before the U.S. Supreme Court?

7. What did the Court decide?

8. What reasons did the majority give for their decision?

9. What has been the significance of Near v. Minnesota?

Interpreting Evidence

Study the diagram on the next page.

1. What is the main idea of the diagram?

2. Which route to the Supreme Court did the Near case follow? Why did the case not take the other route?

3. Which step did the Near case skip?

4. Near lost twice in the Minnesota Supreme Court. What was the Court's ruling each time?

5. What was the vote in the Supreme Court?

STATE ROUTE

↓

Defendant loses in State trial court.

↓

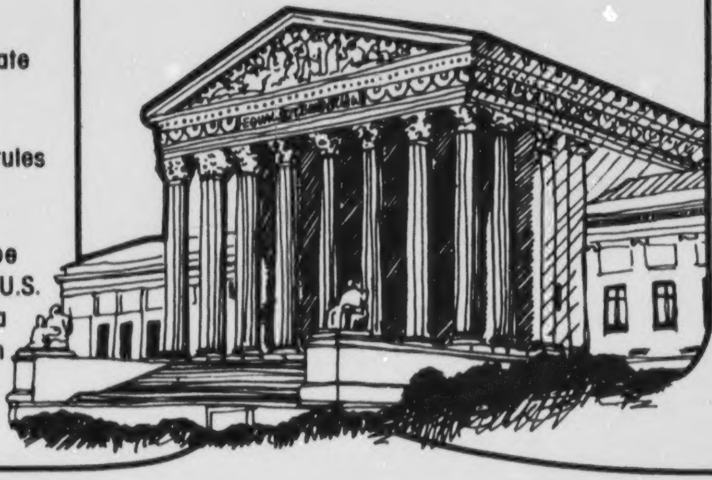
He takes case to State appeals court.

↓

State supreme court rules on case.

↓

Decision can now be appealed directly to U.S. Supreme Court if a constitutional question is involved.



FEDERAL ROUTE

↓

Case involving federal law is tried in a U.S. district court.

↓

Loser takes case to a U.S. circuit court of appeals.

↓

Court of appeals ruling can be submitted to U.S. Supreme Court for review.

Two Main Roads to the Supreme Court

LESSON PLAN AND NOTES FOR TEACHERS

IV-10. Pathway to Judgment: Near v. Minnesota (1931)

Preview of Main Points

In the case of Near v. Minnesota, the U.S. Supreme Court for the first time ruled that states must not abridge the First Amendment's guarantee of freedom of the press. The case is used here to illustrate to students the path a case may follow to the Supreme Court. It begins at the county court level, goes to the Minnesota Supreme Court, back to the county court, and then back once more to the state highest court. From there it goes to the U.S. Supreme Court. The lesson provides a detailed look not available in textbooks about how major cases reach the Supreme Court.

Connection to Textbooks

This lesson could be used to supplement government textbook material on the judicial process and the Supreme Court and with material on civil liberties. In addition, the lesson illustrates the federal nature of our system in two ways: (1) the U.S. Supreme Court ruled a state law unconstitutional and (2) the Near case progressed through a state court system before being finally settled in a national court.

The lesson could supplement American history textbook discussions about social and political issues of the period between World Wars I and II.

Objectives

Students are expected to:

1. explain the circumstances leading up to Near v. Minnesota;
2. identify the main participants and constitutional issue in Near v. Minnesota;
3. identify the steps that the case followed through the two court systems;
4. explain the interests of third parties in the case;
5. explain the relationship of the federal and state court systems as revealed in this case;
6. explain the significance of the Supreme Court's decision with regard to freedom of the press;

7. practice skills in reading diagrams relevant to the case study;

8. develop a greater understanding of the process through which major cases reach the Supreme Court.

Suggestions For Teaching The Lesson

This is a case study designed to provide students with a detailed look at the process through which major cases reach the U.S. Supreme Court. Use questions at the end of the lesson to help students comprehend and analyze the facts and ideas of the case.

Opening The Lesson

- Explain to students how this lesson is connected to their textbook materials and inform them about the main points of the lesson.
- Tell students that the purpose of the lesson is to show how major cases reach the U.S. Supreme Court.

Developing The Lesson

- Have students read the case study.
- Ask them to answer the questions about reviewing facts and ideas. You might wish to check student comprehension of the case by conducting a discussion of these questions.
- Move to a consideration of the interpreting evidence questions. Have students study the diagram about "Roads to the Supreme Court" and answer the questions about it.
- Conduct a discussion of the questions about interpreting evidence.

Concluding The Lesson

- Tell students that one popular saying is "Justice delayed is justice denied." Ask how that saying might apply to the *Near* case. Ask students if they believe it is a good idea to provide for more than one appeal in our judicial system. Finally, ask students to help formulate a list of attributes associated with taking a case all the way to the Supreme Court (e.g. a real conflict between parties, time and money, a determination to win, expert legal help, etc.).

Suggested Reading

Friendly, Fred W. Minnesota Rag (New York: Random House, 1981).

This book is a case study of Near v. Minnesota. It gives the behind-the-scenes story of Minnesota's attempts to enforce a "gag rule" in closing down a "yellow sheet," the Saturday Press. The book follows the case step-by-step through the Minnesota courts and on to the U.S. Supreme Court. It discusses the significance of the case as a precedent for future Supreme Court decisions that built a tradition of no prior restraint of the American press.

Murphy, Paul L. "Near v. Minnesota in the Context of Historical Developments" (Minnesota Law Review Vol. 66, No. 1, November, 1981), pp. 95-160.

This article, which appeared in the Minnesota Law Review, gives the historical importance of Near v. Minnesota. It would be useful for teachers.

IV-11. OVERRULING PRECEDENT: THE FLAG SALUTE CASES

In deciding cases--and sometimes the meaning of the Constitution--the Supreme Court often follows an informal rule called stare decisis, meaning "let the decision stand." Stare decisis, in effect, remind judges to be consistent by following precedents or earlier decisions in similar cases.

There is a practical reason for the doctrine of stare decisis. The law needs to be stable. Justice William O. Douglas explained the importance of stare decisis this way:

> Stare decisis provides some moorings so that men may trade and arrange their affairs with confidence. Stare decisis serves to take the (chance) ...out of law and to give stability to a society. It is a strong tie which the future has to the past.

Because of the informal "rule" of stare decisis the Supreme Court Justices look not only to the law and the Constitution; they also refer to precedents when making decisions about a case. Throughout its history, the Court often has upheld or only modified in some way the decisions of earlier courts on a particular issue, such as the limits of free speech or the extent of Congress' power over commerce.

Yet stare decisis is only a guideline, not a hard and fast rule. The Supreme Court can, and sometimes does, change its mind in a dramatic way.

Some of the most important and controversial of the Courts' decisions have come in cases where the Court has overruled itself. From 1810 to the present, the Court has made an exception to the doctrine of stare decisis (and overruled itself) more than 100 times.

The modern day Court has been more likely to change its mind than earlier Courts. More than 75 percent of the Courts' reversals have come since 1900. Prior to 1900 the Court overruled itself only 28 times. The Court is less likely to follow stare decisis when dealing with constitutional questions than when interpreting the meaning of laws passed by Congress.

One Justice explained the Court's attitude this way: "...we are not unmindful of the desirability of continuity of decision in constitutional questions." However, he added, "when convinced of former error, this Court has never felt constrained to follow precedent."

Sometimes the precedent overruled by the Court has been more than a century old. Other times the Court reverses itself within the space of a few years. What happens in such cases? Why do the Justices change their minds?

The flag salute cases, as they came to be called, are a good example of how the Court set a precedent and then overruled itself. The cases involved schools, children, the American flag and a conflict between religion and political duty.

The First Flag Salute Case

The issue began one day in 1936 when Lillian Gobitis, 12, and her brother William, 10, came home from school with news that upset their parents. They had been expelled from their Minersville, Pennsylvania, school for refusing to salute the American flag during the morning patriotic exercises.

The Gobitis family belonged to the Jehovah's Witnesses faith. This religion taught that saluting the flag was like worshiping a graven image and thus against God's law.

Lillian and William's parents appealed to the Minersville school board to excuse their children from the flag salute requirement. The board refused. The children were placed in a private school. Mr. Gobitis sued to stop the school board from requiring the flag salute of children attending the public schools. Federal district and appellate judges upheld Gobitis. The Minersville school board then appealed to the Supreme Court.

The Constitutional Issue and Precedents. Could the government demand that Jehovah's Witnesses be forced to salute the American flag against their religious beliefs? The Witnesses claimed the Minersville school board's regulation violated their First Amendment right to the "free exercise" of religion.

There were no real precedents for the case. Three times before, most recently in 1939, the Court had upheld flag salute requirements with brief, unsigned opinions. Thus, the Court had never fully dealt with the issue.

Times were changing, however. The United States was about to enter World War II. Exhibitions of loyalty and patriotism were becoming very important. The Court agreed "to give the matter full consideration." The case was called Minersville School District v. Gobitis.

The Court's Decision. In 1940, the Court voted 8 to 1 to uphold the flag salute requirement. Justice Felix Frankfurter wrote the majority opinion. He argued that religious liberty must give way to state authority so long as the state did not directly promote or restrict religion. Thus, the school board's flag salute requirement was constitutional.

Frankfurter called the controversy a "tragic issue" for which there was no easy answer. However, he argued that national unity is the basis for national security. If a local school board believed that a compulsory flag salute was a means to obtaining national unity, then the Court should not stand in its way.

An Important Dissent. The lone dissenter in the Gobitis case was Justice Harlan Fiske Stone. He chose to place religious freedom above political authority. Stone argued that when the state attempts to force children to express a belief they do not really hold, it violates their First Amendment rights. Furthermore, he wrote, there are other ways to instill patriotism in students. Within three years, Stone's opposition to the Gobitis decision would come to be accepted by the majority in a similar case. Here is what happened.

Conditions for Overruling the Gobitis Decision Develop

The Gobitis decision set a precedent. But the precedent did not last. Almost immediately after the decision, conditions developed that led the Court to overrule Gobitis. Two factors influenced the Court: (1) reaction to the decision from the public and the legal community and (2) changes in the membership of the Court.

Reaction to the Decision. To Justice Frankfurter's surprise, there was a strong reaction to the Gobitis decision. More than 170 leading newspapers opposed the decision. The St. Louis Post-Dispatch was typical. "We think this decision of the United States Supreme Court is dead wrong," declared an editorial.

Perhaps more importantly, from the Justices' viewpoint, members of the legal profession strongly condemned the decision. Articles in special journals read by legal scholars around the country were nearly unanimous in their opposition to the decision.

At the same time, a wave of violent patriotism followed the decision. Jackson, Mississippi, banned Jehovah's Witnesses. A Witness meeting hall was burned in Maine. A lawyer trying to represent besieged Witnesses was beaten and driven from Connersville, Indiana. In several states, children of Jehovah's Witnesses families continued to refuse to salute the flag at school. They were committed to reformatories as delinquents. Thus it seemed that the Supreme Court's decision prompted citizens to take the enforcement of patriotism into their own hands.

The strong reactions to the decision began to influence the thinking of several Justices. In 1942 three Justices--Hugo L. Black, William O. Douglas and Frank Murphy--announced they had changed their minds about compulsory flag salutes. In a special opinion in an unrelated case dealing with Jehovah's Witnesses they said:

> Since we joined in the opinion in the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it was...wrongly decided.

Changes in Court Membership. A second factor leading to the overruling of *Gobitis* was a change over a three-year period in the membership of the Court. Two new Justices, both liberals, replaced conservative Justices. The first new member was Robert H. Jackson. Later Wiley B. Rutledge joined the Court. Rutledge was known to have strong views favoring freedom of religion. In addition, Justice Stone, who dissented against the *Gobitis* decision, became Chief Justice. A new point of view prevailed on the Court after these changes in membership.

By 1943 five Justices, a majority, were against compulsory flag salutes. They were Chief Justice Stone, the three Justices who changed their minds, and the newest appointee, Rutledge. In addition, it looked like the other new Justice, Robert H. Jackson, would also vote against requiring flag salutes.

The Supreme Court, however, does not simply make announcements about the Constitution. It interprets the meaning of the Constitution as it decides real cases it chooses to hear. The opportunity for the Court to reverse the *Gobitis* decision came in 1943 in the case of *West Virginia State Board of Education v. Barnette*.

The Second Flag Salute Case

The *Gobitis* decision encouraged West Virginia, as well as several other states, to require all schools to make the flag salute a regular part of school activities. The West Virginia regulation was strict. Students who refused to salute the flag would be punished by expulsion from school. They would not be readmitted until they agreed to perform the salute. At the same time, they would be considered "unlawfully absent"--and for this could be sent to a reformatory and their parents or guardians prosecuted. If found guilty, the parents could be fined $50 and sentenced to thirty days in jail. Several West Virginia Jehovah's Witnesses families, including the family of Walter Barnette, sued for an injunction to stop enforcement of this rule. The case came eventually to the Supreme Court.

The Court's Decision. By a 6 to 3 vote the Supreme Court ruled that the West Virginia flag salute requirement was unconstitutional. Thus, within three years, the Court dramatically overruled the precedent set in the Gobitis case. Justices Stone, Rutledge, Douglas, Black, Murphy, and Jackson voted to overrule Gobitis.

Justice Jackson wrote the majority opinion with Frankfurter, now in the minority, dissenting. Their two opinions are widely regarded as two of the strongest, most eloquent in Supreme Court history.

Jackson argued that public officials could, of course, take steps to promote national unity. However, he said, "the problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement." The majority's answer was no. The First Amendment prohibited public officials from forcing students to salute the flag against their religious beliefs.

"Compulsory unification of opinion," Jackson went on, "achieves only the unanimity of the graveyard." In fact, Jackson said, "the frank purpose of the Bill of Rights was to withdraw freedom of speech, press, religion, and other basic rights from the reach of legislatures and popular majorities."

Jackson concluded with one of the most famous paragraphs in Supreme Court history:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act of faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

In dissent, Frankfurter maintained that the state school board had the constitutional authority to require that public school children salute the flag. He argued that the Court had overstepped its bounds by placing its judgment above that of local legislatures and school boards in determining local policy on such matters.

Frankfurter especially disliked Jackson's argument that questions associated with the Bill of Rights should be beyond the "reach" of local officials and legislatures. Frankfurter believed judges had a heavy duty to respect and give in to the discretion of legislatures and the laws they passed.

Aftermath of the Barnette Case

The Barnette case set a new precedent that has been followed to this day. Several attempts by officials to establish new flag salute requirements have been turned back by federal courts following the Barnette precedent.

For example, a recent New Jersey law required students not taking part in a flag salute ceremony simply to stand at "respectful attention." In 1977 both a federal district court and the Court of Appeals ruled against the law. They said it violated the limits on flag salute requirements spelled out in the 1943 Barnette case.

The flag salute cases show how the Supreme Court can change its mind about the meaning of the Constitution. The doctrine of stare decisis and the use of precedent creates stability in the law. However, exceptions to stare decisis and overruling precedent are one way the Court adapts the Constitution to changing conditions.

Reviewing Facts and Ideas

1. What does stare decisis mean?
2. Does the Supreme Court always follow the doctrine of stare decisis? Explain your answer.
3. Describe the events leading to the Gobitis case.
4. State the issue in the Gobitis and Barnette cases.
5. What did the Court decide in the Gobitis case? What reasons did the majority give for this decision?
6. Which Justice dissented from the Gobitis decision? Why?
7. How did the press, legal profession and public react to the Gobitis decision?
8. Name the three Justices who were influenced by the reaction to the Gobitis decision.
9. What change in membership on the Court took place between 1940 and 1943? Which five Justices were clearly ready to overrule the Gobitis decision?
10. What did the Court decide in the Barnette case?
11. Has the Barnette case stood as precedent?

12. The flag salute cases illustrate that judges make their decisions according to the "letter of the law" only.

TRUE FALSE

Explain your answer.

Interpreting Evidence

1. Refer to the statement by Justice Douglas on page 413.

   (a) What is the main idea of this statement?

   (b) Does Justice Douglas think stare decisis is useful? Explain.

2. Refer to the quotation from Justice Jackson's opinion in the *Barnette* case on page 417.

   (a) Does Jackson's statement go beyond the specific issue in the *Barnette* case? Explain.

   (b) Why would Jackson's opinion be hailed as an important statement about limited government?

LESSON PLAN AND NOTES FOR TEACHERS

IV-11. Overruling Precedent: The Flag Salute Cases

Preview of Main Points

This case study describes the cases of Minersville School District v. Gobitis (1940) and West Virginia State Board of Education v. Barnette (1943). These cases illustrate how and why the Supreme Court overruled itself and changed the meaning of the Constitution in a short period of time. In Gobitis the Court ruled that school children must salute the flag; in Barnette it ruled they could not be forced to pledge allegiance to the flag.

Connection to Textbooks

This lesson can be used to strengthen government textbook discussions of the powers of the Supreme Court or with U.S. history or government texts to supplement their coverage of the informal development of the Constitution.

Objectives

Students are expected to:

1. comprehend the function of the doctrine of stare decisis in decision-making;
2. identify the constitutional issue involved in the 1940 Gobitis and 1943 Barnette decisions;
3. explain how and why the Supreme Court decided to overrule the precedent set in the Gobitis decision;
4. make a judgment about the Court's power to overrule precedent and change its mind when dealing with constitutional issues.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" study of the powers of the Supreme Court or the informal development of the Constitution.

Opening The Lesson

- Begin by asking students, "Is a decision by the Supreme Court a permanent decision which can never be changed or reviewed in the future?"

- Then tell students that in 1940 the Supreme Court ruled that school children could be forced to salute the flag in morning exercises, but that in 1943 it said they could not be made to do this.

- Ask students to brainstorm for five minutes, suggesting hypotheses for why the Court changed its position.

Developing The Lesson

- Have students read the case study.

- Conduct a discussion of the questions under "Reviewing Facts and Ideas" and "Interpreting Evidence" to make sure students have understood the main ideas and can interpret them.

Concluding The Lesson

- Use the "fishbowl technique" to have students discuss the following questions: "Is the inconsistency on the part of the Supreme Court illustrated by these cases desirable?" "Should the Court be influenced by the press, by law review journals and by citizen actions?"

- Break the class into four groups. Each group will spend ten minutes discussing the above questions.

- Next the teacher should choose one representative from each group to sit in the middle of the classroom with other students in chairs forming a circle around them. There will be five chairs in the center -- one of them empty at the beginning. The students in the fishbowl will then continue the discussion in front of all other students. Anyone who wishes to participate in the discussion may temporarily enter the vacant seat and join in the conversation.

Optional Assignment

- This case study provides students with information they can use to make informed judgments about the Supreme Court's role in interpreting the Constitution.

  Two essay questions which might be assigned to achieve this purpose are:

  1. Some experts believe that the Court was influenced by the reaction of the press, the law review journals, and by violence against Jehovah's Witnesses to overturn Gobitis. If this is true, do you approve? Why or why not?

  2. According to Charles Evans Hughes the Constitution is what the judges say it is. How do the flag salute cases support his statement? Do you believe the Court should have this power? Why or why not?

Suggested Reading

Chapter 15, "The Flag Salute Cases" in John A. Garraty (ed.), Quarrels That Have Shaped the Constitution (New York: Harper Torchbooks, 1962) presents an excellent and readable discussion of the Gobitis and Barnette cases.

IV-12. THE COURT'S USE OF DISSENT

Have you ever argued with your friends? Of course, you have; we all have! Have you ever found yourself in a situation where all of your friends felt one way about something and you, alone with a different view, were unable to convince anyone else that you were right? You were a dissenter. To dissent is to disagree.

Have you ever wanted to say -- "I told you so" -- when later on, your views were accepted by the majority, even though everyone else disagreed with you earlier? If so, you were satisfied that your dissenting opinion was accepted as correct. Thus, you were vindicated.

One or more Justices often disagree with the opinion of the majority in a case before the Supreme Court. Justices who disagree with the majority are dissenters. They interpret the law, as it applies to a case, in a way that is different from the majority's interpretation.

A Justice who disagrees with the Court's opinion in a case usually writes a dissenting opinion. There is no requirement that a dissent be accompanied by an opinion. Ordinarily, however, a dissenting Justice writes an opinion to explain the reasons for disagreement with the majority decision.

Why do dissenters take the time and trouble to write an opinion, which will not be the judgment on the case? What is the purpose of a dissenting opinion? What are the uses of dissent in the work of the Court?

Purposes of Dissenting Opinions

A dissenting opinion is an argument against the decision of the majority in a case before the Supreme Court. For example, in 1896, the Court approved a state law requiring trains to provide "separate but equal" facilities for black and white passengers (Plessy v. Ferguson). Justice John M. Harlan wrote a dissenting opinion against the Court's decision in the Plessy case. He argued that the majority of the Court was wrong to rule in favor of segregation of blacks and whites in their use of public facilities. He wrote that "the Constitution is color-blind, and neither knows nor tolerates classes among citizens."

A dissenting opinion is not an attempt to change the minds of the Court's majority. The Court's final decision has been made before the dissenting opinion is written. For instance, Justice Harlan's dissent in the Plessy case was not written to change the decision in that case of 1896. Rather, Justice Harlan, like other dissenters on the Court, was trying to persuade other Americans, contemporaries of the Court, that the majority decision was wrong.

A dissenting opinion is an attempt to raise doubts in the minds of citizens about the majority's decision in a particular case. The dissenter hopes eventually to influence public opinion against the majority opinion of the Court. Justice Harlan, for example, wanted to cast a shadow of doubt and uneasiness about the Court's decision in favor of racial segregation laws. He hoped to stimulate questions and criticisms of the Court's decision, which might sustain efforts to overturn it someday.

The ultimate purpose of a dissenting opinion is to shape future decisions. The dissenting judge hopes that, in the future, the Court will reconsider the majority opinion and overrule it. Thus, the dissenter hopes that his opinion someday will become the basis for a majority opinion in a similar case. Justice Charles Evans Hughes wrote: "A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."

The dissenter is prodding the conscience of the country and trying to lead the Court to correct what the dissenter views as an error. For example, Justice Harlan's dissent in 1896 became the rule of the Court in 1954. In the case of Brown v. Board of Education, the Court decided unanimously against the majority opinion in the Plessy case of 1896.

The eventual overruling of a majority opinion, in favor of an earlier dissent, is rare. For example, Justice Oliver Wendell Holmes, known as the "Great Dissenter," wrote 173 dissenting opinions during thirty years on the Supreme Court. Few of Justice Holmes' dissenting opinions had any effect on later reversals of court decisions.

The Supreme Court does not readily admit errors and overrule past decisions. The principle of stare decisis ("Let the decision stand") has a powerful influence on the Court. Laws established in earlier decisions of the Court tend to be accepted as guides in later cases.

One Supreme Court Justice, who exemplifies the role of a responsible dissenter, is Justice Hugo L. Black. Justice Black served on the Supreme Court for thirty-four years. Obviously, he participated in decisions about many cases brought before the Court during his long tenure. He witnessed many changes in our national life. He was nominated to the bench by President Franklin D. Roosevelt, and he resigned in 1971, when President Richard Nixon was in the White House.

Throughout the many changes that he witnessed, Justice Black held strongly to his views of fairness, even when those views were outside the mainstream of Court opinion.

Disagreements were stimulating to Black. He once wrote in a letter to a friend, "There is no earthly reason why you and I should think less of one another because we happen to disagree. Disagreements are the life of progress." He followed this viewpoint, not only on the Court where he gained the reputation as a great dissenter, but in his personal life as well.

A zealous champion of individual and minority group rights, Black's opinions emphasize support for the hapless and the helpless. He left a lasting mark upon the Supreme Court and the nation. Some of his dissenting opinions finally were accepted by the Court as majority decisions during his years of service. This must have given him great personal satisfaction.

Following is an example from Justice Black's career that shows the importance of dissenting opinions. In this example, Black's dissenting opinion in one case (Betts v. Brady, 1942) became the majority opinion in another case (Gideon v. Wainwright, 1963).

Reviewing Main Ideas and Facts

1. What is a dissenting opinion?
2. What is the purpose of dissenting opinions?
3. Why are dissenting opinions important?
4. Why was Justice Black a great example of a dissenter on the Supreme Court?

Justice Black's Dissent (Betts v. Brady, 1942)

Smith Betts, a forty-three year old unemployed man, was accused of robbing a country store in Carroll County Maryland on Christmas Eve in 1938. Indicted for armed robbery and assault, Betts was brought to trial. He pleaded "not guilty" and asked the presiding judge to appoint a lawyer to advise and help him, because he could not afford to pay for a lawyer himself. The judge refused on the grounds that it was the practice to appoint counsel only in cases involving the death penalty. Smith Betts was found guilty and sentenced to the Maryland Penitentiary for eight years.

The Constitutional Issue. "I have not had a fair trial," protested Betts. He argued that the Sixth Amendment guarantees to everyone the right to counsel. The Sixth Amendment says that "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

Betts complained that he had been denied his right to a lawyer and, furthermore, his rights had been violated under the Fourteenth Amendment, which entitles all to "due process of the law." The arguments were brought before the Supreme Court.

The Court was being asked whether or not a poor defendent was entitled to an attorney, even if he could not afford to pay for one. What was the meaning of "right to counsel" as stated in the Sixth Amendment? Does the "due process of law" clause of the Fourteenth Amendment require states to provide lawyers to defendents too poor to obtain their own attorneys?

The Decision. The Court decided that "the Sixth Amendment of the national Constitution applies only to trials in federal courts." The Court concluded that Smith Betts had been given ample means and opportunity to defend himself during his trial. The question was simply whether failure to assign counsel resulted in any fundamental unfairness under the "due process" clause of the Fourteenth Amendment. The majority of the Justices said that it did not. In cases that did not involve capital punishment, the states did not have to supply a lawyer to a defendent too poor to employ his own attorney.

Dissenting Opinion. Justice Hugo Black was shocked! Being unable to change the minds of the majority during discussion and debate behind closed doors, Black, joined by two other justices, dissented. The dissenting opinion argued that the "due process" clause of the Fourteenth Amendment applies to those rights spelled out in the Bill of Rights, which includes the Sixth Amendment guarantee of the right "to have the assistance of counsel . . . ." Thus, Justice Black insisted that the state of Maryland had denied Smith Betts one of his constitutional rights as a defendent.

Justice Black wrote: "A practice cannot be reconciled with "common and fundamental ideas of fairness and right, which subjects innocent men to increased dangers of conviction merely because of their poverty . . . ."

Black went on to argue that no person should "be deprived of counsel merely because of his poverty." To do so, said Black, "seems to me to defeat the promise of our democratic society to provide equal justice under the law."

Reviewing Main Ideas And Facts

1. Why was Smith Betts arrested, tried and convicted?
2. What was Betts' legal complaint about his conviction?
3. What were the constitutional issues in the Betts case?
4. What was the Court's decision in the Betts case?
5. How did the majority of the Court interpret the Constitution to support the decision in the Betts case?
6. Why did Justice Black and two associates disagree with the majority's decision? (Explain the constitutional bases for the dissenting opinion in the Betts case.)

Justice Black's Vindication (Gideon v. Wainwright, 1963)

In 1963, Hugo Black was enjoying his twenty-sixth year on the Supreme Court. The only other member of the Court in 1963, who had served with Black in 1942, was William O. Douglas. In 1942, Justice Douglas had joined Black in his dissent against the majority opinion in the Betts case.

In 1963, a new opportunity arose for the Court to consider the issues of the Betts case. In that year, Clarence Earl Gideon petitioned the Supreme Court to review his conviction in a trial where he had been denied the right to counsel by the state of Florida.

Clarence Earl Gideon was arrested in Florida for the burglary of a pool hall. Gideon asked the court to appoint an attorney for him, because he was too poor to pay a lawyer. Gideon argued that the Sixth Amendment guaranteed "the right to counsel," and the Fourteenth Amendment provided the right to "due process of law." Gideon charged that he could not receive a fair trial without counsel to represent him.

The judge in the Florida court noted Gideon's protests in the records. However, he denied Gideon's request that the state provide an attorney for him, since the case did not involve capital punishment. Gideon was told to defend himself, and he did the best he could. Gideon was found guilty and sentenced to five years in a Florida state prison.

The Constitutional Issue. Gideon petitioned the Supreme Court to review his case. His plea for review arrived by letter, addressed to the Supreme Court of the United States. It was written simply with pencil on pages of lined paper. The plea stated, "The question is very simple. I requested the (Florida) court to appoint me attorney and the court refused." He maintained that the state court's refusal to appoint counsel for him denied him rights provided by the Sixth and Fourteenth Amendments.

The case of Clarence Gideon was similar to the case of Smith Betts. Would the Court reverse or sustain the ruling in Betts v. Brady? Would Justice Hugo Black, the dissenter, be able to say with satisfaction -- "I told you so?"

The Decision. Gideon v. Wainwright, 1963, is a landmark case of the Supreme Court. It also was a landmark event in the life of Hugo L. Black. The Court unanimously decided in Gideon's favor. The decision in Betts v. Brady (1942) was overruled.

The Court concluded that the "due process" clause of the Fourteenth Amendment prohibited Florida or any other state from denying rights of accused persons provided in the Sixth Amendment. According to this decision, all persons charged with a serious crime must have the aid of an attorney. If the defendent is too poor to pay the lawyer's fee, then the state is required to provide counsel.

Recognizing that the new decision was a personal triumph for Justice Black, Chief Justice Earl Warren asked Black to write the majority ruling of the Court. Black wrote:

> . . . in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him . . . . Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses . . . . (There is) widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours . . . . From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendent stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

An immediate consequence of the Court's decision was a new trial for Clarence Earl Gideon. This time he had the aid of an attorney. The jury decided that Gideon was "not guilty" of any crime. Smith Betts, too, might have won his case with the help of an attorney.

Reviewing Main Ideas and Facts

1. How was the Gideon case of 1963 similar to the Betts case of 1942?
2. What was the Court's decision in the Gideon case?
3. How did the Court's interpretation of the Constitution differ in the cases of Gideon and Betts?
4. Why was a new trial ordered for Gideon when it had not been ordered for Betts?
5. What do the cases of Betts and Gideon show about the Court's use of dissenting opinions?

STUDENT WORKSHEET

The Court's Use of Dissent

1. Check each of the following items that are true statements about judicial dissent or dissenting opinions coming from the Supreme Court. Be prepared to explain your answers.

   ____ a. A dissenting Justice usually is viewed as a troublemaker by the majority on the Court.

   ____ b. The dissenting Justice interpretes the Constitution in a different way from the majority.

   ____ c. A dissenting opinion is a way of telling other Justices that "they are wrong."

   ____ d. A dissenter is voting "NO" mainly to register a protest.

   ____ e. A Justice writes a dissenting opinion in hopes of changing the vote of other Justices on the case in question.

   ____ f. A dissenting opinion is written in the hopes of influencing contemporaries off the court.

   ____ g. A dissenter is trying to get prisoners out of jail.

   ____ h. A dissenting opinion is written in hopes of changing future decisions.

   ____ i. A dissenting opinion vetoes the majority decision.

   ____ j. Most dissenting opinions eventually become grounds for changes in the Court's interpretation of the Constitution.

2. List two purposes of a dissenting opinion.

   a. ____

   ____

   b. ____

   ____

3. Dissenting opinions sometimes shape the meaning of the Constitution. Present two examples in support of this idea.

   a. ____

   ____

   ____

   ____

   b. ____

   ____

   ____

4. a. What is the main idea of the excerpt from Justice Black's opinion in the Gideon case? (See page 428.)

b. Compare Justice Black's opinion in the Gideon case to his dissenting opinion in the Betts case. How is it similar?

c. Compare Justice Black's opinion in the Gideon case to the majority opinion in the Betts case. How is it different?

LESSON PLAN AND NOTES FOR TEACHERS

IV-12. The Court's Use of Dissent

Preview of Main Points

This lesson deals with the importance and purposes of dissenting opinions by Justices of the Supreme Court. Justice Hugo Black's dissent in Betts v. Brady, 1942 is used as an example of a responsible dissent that became a majority ruling, as did the Betts ruling when it was overturned by the Gideon v. Wainwright decision of 1963. The lesson also illustrates judicial interpretation of the Constitution.

Connection to Textbooks

The uses of dissenting opinions are not discussed in typical American government and history textbooks. Most history textbooks make little or no mention of any dissenting opinions. This lesson can be used to supplement American government textbook chapters on federal and state courts. It can be used with American history textbook sections about the Warren Court.

Objectives

Students are expected to:

1. know the purposes of a dissenting opinion;
2. know that a responsible dissenting opinion may, in time, become a majority decision;
3. note similarities and differences in the Betts case and the Gideon case;
4. identify the constitutional issues of the Betts and Gideon cases;
5. explain the constitutional bases of the Betts and Gideon cases;
6. explain the use of a dissenting opinion in the overturning of the Betts decision in the Gideon case.

Suggestions For Teaching The Lesson

Opening The Lesson

- Ask students to speculate about the meaning and uses of a dissenting opinion.
- Preview the main points of the lesson for students.

Developing The Lesson

- Have students read each of the three sections of this lesson. They should respond to the review questions at the end of each section before moving on to the next section.
- You might have students discuss each section of the lesson. You may wish to have students discuss these section review questions in small groups of five or six students. Or you might wish to hold a discussion involving all class members. An alternative is to have students use the review questions only as a "self-check" about their understanding of each section of the lesson.

Concluding The Lesson

- Have students complete the Worksheet at the end of the lesson. This is an application lesson that tests student comprehension of the idea of a dissenting opinion. It also checks their understanding of how a dissenting opinion in one case (Betts v. Brady) influenced a majority opinion in a later case (Gideon v. Wainwright).
- You might have students hand in the Worksheet and grade it as a formal test. Or you might have students exchange Worksheets and evaluate one another's responses. Another alternative is to conduct a class discussion about the items on the Worksheet.

Suggested Reading

Barth, Alan. Prophets With Honor: Great Dissents and Great Dissenters in the Supreme Court (New York: Random House, Vintage Books, 1974).

This book is an interesting and lively account of the uses of dissenting opinions. Dramatic cases and personalities are featured.

Lewis, Anthony. Gideon's Trumpet (New York: Bantam Books, 1964).

This is the story of the case of Gideon v. Wainwright.

Suggested Films

JUSTICE UNDER LAW: THE GIDEON CASE

In the Gideon case, the defendant was tried and convicted without legal counsel. The film shows how Gideon, in prison, communicated with state and federal legislative bodies to obtain legal representation, and how the Bill of Rights and Oliver Wendall Holmes' interpretations guided the Supreme Court decision in the case. From OUR LIVING BILL OF RIGHTS series, Encyclopedia Britannica Educational Corp., 1966, 22 minutes.

THE RIGHT TO LEGAL COUNSEL

The 1963 Gideon v. Wainwright decision requiring that indigent defendants accused of serious crimes must be offered counsel overruled an earlier decision in Betts v. Brady. When tried with adequate legal representation, the defendant, Gideon, was acquitted. BFA Educational Media, 1968, 15 minutes.

JUSTICE BLACK AND THE BILL OF RIGHTS

Supreme Court Justice Black explains his views on interpreting the Constitution, freedom of speech, freedom of assembly, and the rights of the accused. He also answers reporters' questions on the philosophy of the Bill of Rights in relation to current issues of law, morality, freedom of speech and civil rights. Columbia Broadcasting System; BFA Educational Media, 1968, 32 minutes.

IV-13. CONSTITUTIONAL RIGHTS IN A TIME OF CRISIS, 1941-1945

On December 7, 1941, Japanese aircraft attacked Pearl Harbor in Hawaii. The surprised defenders suffered a crushing defeat. Five American battleships and three cruisers were disabled or destroyed, and 2,355 members of the American armed services were killed. Another 1,178 were wounded.

President Roosevelt denounced the "sneak attack" and Congress declared war on Japan. A few days later Germany and Italy also declared war on the United States. Thus, Americans entered World War II.

Within three months, the Japanese overran most of southeast Asia, including the American territories of Guam and the Philippine Islands. Americans feared a Japanese invasion of Hawaii, or even California.

General J. L. DeWitt was responsible for defending the Pacific Coast against enemy attack. He feared that 112,000 persons of Japanese ancestry, who lived in the west coast states, might be a threat to national security. So General DeWitt recommended that these people be sent away from the region.

Suspension of Constitutional Rights

Among the people of Japanese ancestry, who lived in the coastal region, were more than 75,000 American citizens. Many of these citizens had been born and raised in the United States. Most had never seen Japan and spoke only English. They considered themselves to be Americans, and they proclaimed loyalty only to the USA. Secretary of War Henry Stimson thought otherwise. He urged President Roosevelt to take action to prevent Japanese Americans from helping Japan's war effort.

On February 19, 1942, the President issued Executive Order #9066. It gave authority to military commanders to establish special zones in territory threatened by enemy attack. The military commanders were given power to decide who could come, go, or remain in the special military areas. The President issued this Executive Order on his authority, under the Constitution, as commander in chief of the nation's armed forces.

On March 2, General DeWitt established Military Areas #1 and #2 in the western part of the United States.

On March 21, Congress passed a law in support of the President's Executive Order and the subsequent actions of General DeWitt.

On March 24, General DeWitt proclaimed a curfew between the hours of 8:00 P.M. and 6:00 A.M. for all persons of Japanese ancestry living within Military Area #1, which comprised the entire Pacific coastal region.

On May 9, General DeWitt ordered the exclusion from Military Area #1 of all persons of Japanese background. This included thousands of U.S. citizens, who were born on American soil. The attitudes, beliefs and behavior of these people were thoroughly American. Most of them would have felt out of place in Japan.

The Japanese Americans were sent to Relocation Centers--far from the coastal region--which were nothing less than concentration camps. In effect, more than 75,000 American citizens, who had broken no laws, were placed in jail without a trial.

They could take with them only what they could carry. Their bank accounts had been frozen by government order on December 8, 1941, so they were without funds. To raise cash, they had to sell what they could. Other Americans and local governments took advantage of this, offering to buy possessions and property at prices way below their value. Most possessions and property lost in this way could never be restored.

Constitutional Issues

It seemed that more than 75,000 American citizens had been denied their constitutional rights of "due process" by military commanders, who acted under authority granted by the President and Congress. The Fifth Amendment says "No person shall be...deprived of life, liberty, or property, without due process of law...." Article I, Section 9, of the Constitution grants the privilege of the writ of habeas corpus. This is a written court order issued to inquire whether a person is lawfully imprisoned or detained. The writ demands that the persons holding the prisoner justify his or her detention or release the person.

Had the constitutional rights of Japanese Americans been taken away? The Supreme Court finally was asked to rule on the legality of holding thousands of American citizens in detention camps solely because of their ancestry. Would the Court overturn military actions sanctioned by the President and Congress?

Three notable cases involving the constitutional rights of Japanese Americans came before the Supreme Court. They were:

(1) *Hirabayashi v. United States* (1943)

(2) *Korematsu v. United States* (1944)

(3) *Ex parte Endo* (1944)

The Hirabayashi Case

Gordon Hirabayashi was an American citizen of Japanese ancestry. He was born in the United States and had never seen Japan. He had done nothing to suggest disloyalty to the United States.

Background to the Case. Hirabayashi was arrested and convicted for violation of General DeWitt's curfew order and failing to register at a control station in preparation for transportation to a detention camp.

The Decision. The Court voted unanimously to uphold the curfew law placed on "Japanese Americans" living in Military Area #1. The Court said this was an appropriate use by the President and Congress of war powers provided in the Constitution. The Court also held that the curfew order did not violate the Fifth Amendment.

Speaking for the Court, Chief Justice Stone said discrimination based only upon race was "odious to a free people whose institutions are founded upon the doctrine of equality." However, in this case, said Stone, consideration of race was necessary to protect national security in time of war.

The Court only ruled on the legality of the curfew order. It avoided the larger issue of the legality of holding American citizens in detention centers.

The Korematsu Case

Fred Korematsu was born and raised in Oakland, California. He could only read and write English. He had never visited Japan and knew little or nothing about the Japanese way of life.

Background to the Case. Korematsu had a good job as a welder in a shipyard. He was in love with a white girl and hoped to marry her. Thus, Korematsu tried to avoid transportation to a detention center, which would take him far away from his job and lady friend. The FBI caught up with Korematsu, who was arrested and convicted of violating orders of the commanders of Military Area #1.

The Decision. By a 6-3 vote, the Court upheld the orders that excluded Americans of Japanese ancestry from the Pacific coastal region. The needs of national security in a time of crisis justified the "exclusion orders." The war power of the President and Congress, provided by the Constitution, was the legal basis for the majority decision.

Justice Black admitted that the "exclusion orders" led to severe hardships endured by citizens of Japanese ancestry. "But hardships are a part of war," said Black, "and war is an aggregation of hardships."

Justice Black maintained that Korematsu had not been "excluded" primarily because of his race, but because of the requirements of military security. The majority ruling really did not say whether or not the relocation of Japanese-Americans was constitutional. Rather, the Court side-stepped that touchy issue, emphasizing instead that the nation faced a time of national crisis.

Dissenting Opinions. Three Justices -- Murphy, Jackson and Roberts -- disagreed with the majority. Justice Roberts thought it a plain "case of convicting a citizen as punishment for not submitting to imprisonment in a concentration camp solely because of his ancestry," without evidence concerning his loyalty to the United States.

Justice Murphy said that the "exclusion orders" violated the right of citizens to "due process of law." Furthermore, Murphy claimed that the decision of the Court's majority was "legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life."

Murphy admitted that the argument of military necessity carried weight, but he insisted at the same time that the claim of military necessity must "subject itself to the judicial process" to determine "whether the deprivation is reasonably related to a public danger that is so 'immediate, imminent, and impending' . . . ."

Finally, Murphy concluded that "Individuals must not be left impoverished in their constitutional rights on a plea of military necessity that has neither substance nor support."

The Endo Case

Mitsuye Endo was dismissed from her civil service job in California and ordered to a relocation center. She had never attended a Japanese language school and could neither read nor write Japanese. She was a United States citizen with a brother serving in the U.S. Army. Her family did not even subscribe to a Japanese language newspaper.

Background to the Case. Miss Endo's attorney filed a writ of habeas corpus on her behalf, contending that the War Relocation Authority had no right to detain a loyal American citizen, who was innocent of all the various allegations that the Army had used to justify evacuation.

The Decision. The Supreme Court ruled unanimously that Mitsuye Endo "should be given her liberty." The Japanese American woman, whose loyalty to the United States had been clearly established, should be released from custory.

Justice Douglas said, "Loyalty is a matter of the heart and mind, not of race, creed or color. . . ."

Justice Murphy added, "I am of the view that detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive, but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. . . . Racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people."

Shortly after the Court's decision in the Endo case, Major General Pratt, (commander of Military Area #1 at that time) ordered an end to the "exclusion orders" that had resulted in the detention of people such as Korematsu and Endo. Most of the "Japanese Americans" were free to return home.

Constitutional Significance

The Court had not used the Constitution to protect Japanese-Americans from abusive treatment during World War II. There was interference with civil liberties in the name of a wartime emergency. The Supreme Court allowed the executive and legislative branches of government to engage in behavior that surely would have been found unconstitutional in peacetime.

The Court avoided a significant constitutional question in the cases of Hirabayashi, Korematsu and Endo. Can military authorities -- supported by acts of the President and Congress -- detain citizens (outside of a combat zone), who are charged with no crime, on grounds of defending the nation during wartime?

By avoiding this question, the Court allowed a dangerous precedent to be set by Executive and Legislative actions that sanctioned the Relocation Centers during World War II. A precedent was established in support of evacuation and detention of an unpopular minority during time of war. Will this precedent be used in the future to deny constitutional rights to certain groups of citizens during a national crisis?

Afterward

A government commission formed to investigate wartime espionage reported that there was no evidence of disloyal behavior among the "Japanese-Americans" on the west coast. Not one Japanese-American was found to be a spy for Japan during

World War II, even though many of them were jailed as suspected spies. In addition, one of the best fighting units of the U.S. Army in Europe was made up of Japanese Americans. They proved their loyalty by fighting for their country even though their families had been jailed without "due process of law."

After release from the detention camps, most Japanese Americans returned to the Pacific Coast. They began again, settling in cities and starting new farms. Legal actions were initiated to get back their lost property. In 1948, Congress agreed to pay for some of it, giving the Japanese Americans less than ten cents for each dollar they had lost. This was the only admission by Congress that it had done any wrong to the Japanese Americans during the war. It was a very small way of saying, "We're sorry!"

In 1980, Congress re-opened investigations into the treatment of Japanese Americans during World War II. Congress created the Commission on Wartime Relocation and Internment of Civilians. After nearly three years of careful examination of the evidence, which included testimony from 750 witnesses, the Commission issued a report on February 25, 1983. The report concluded: "A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II."

Reviewing Main Ideas and Facts

1. Why were Americans of Japanese ancestry sent to Relocation Centers?

2. What legal authority for evacuating and detaining Japanese Americans was provided by the President and Congress?

3. What constitutional issues were raised by evacuation and detention of Japanese Americans during World War II?

4. What was the constitutional issue addressed by the Supreme Court in each of these cases?
   a. Hirabayashi v. United States
   b. Korematsu v. United States
   c. Ex parte Endo

5. What was the Court's decision in each of these cases?
   a. Hirabayashi v. United States
   b. Korematsu v. United States
   c. Ex parte Endo

6. What constitutional issue did the Court avoid?

7. What is the continuing constitutional significance of the treatment of Japanese Americans during World War II?

Interpreting and Appraising Judicial Opinions

1. What are the main ideas of the dissenting opinions in the *Korematsu* case by Justices Roberts and Murphy?

2. Following is an excerpt from Justice Jackson's dissent in the *Korematsu* case. What is the main idea of this excerpt?

> A military order, however unconstitutional, is not apt to last longer than the military emergency.... But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution...the Court for all time has validated the principle of racial discrimination in criminal procedures and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.

3. Do you agree with the decisions of the Court in the cases of Hirabayashi, Korematsu and Endo? Explain.

4. Do you agree with the dissenting opinions of Justices Murphy, Roberts and Jackson?

LESSON PLAN AND NOTES FOR TEACHERS

IV-13. Constitutional Rights in a Time of Crisis, 1941-1945

Preview of Main Points

This lesson describes the abridgement of the constitutional rights of Japanese Americans during World War II. It shows the effects of a national crisis on the constitutional rights of an unpopular minority group. Basic questions about civil liberties and rights are raised. The lesson highlights constitutional issues raised by actions of the President, Congress and Courts.

Connection to Textbooks

Most American government textbooks say little or nothing about the suspension of civil liberties of Japanese Americans during World War II. American history texts mention this event, but do not probe it to examine the profound constitutional issues. Thus, the lesson can be used to provide a detailed study of a significant event in American constitutional history. The lesson can be used with chapters on civil liberties in American government textbooks. Of course, it can be used in connection with chapters about World War II in American history textbooks.

Objectives

Students are expected to:

1. know about the Executive Order and federal law that established the authority of military commanders to abridge the constitutional rights of Japanese Americans;
2. identify reasons used to justify the Executive Order and federal law that led to the evacuation and detention of Japanese Americans;
3. know the constitutional issues raised by the evacuation and detention of Japanese Americans;
4. know the issues and decisions involved in three Supreme Court cases: (a) *Hirabayashi v. United States*, (b) *Korematsu v. United States* and (c) *Ex parte Endo*;
5. know the main ideas of the dissenting opinions in the *Korematsu* case;

6. explain how the government actions toward Japanese Americans in World War II shaped the meaning of the Constitution;

7. interpret and appraise the judicial opinions in the cases of Hirabayashi, Korematsu and Endo.

Suggestions for Teaching the Lesson

Opening the Lesson

- Preview the main parts of the lesson for students.

- Explain how this lesson is connected to the material they are studying in the textbook.

Developing the Lesson

- Have students read this case study. Then ask them to respond to the review questions at the end of the lesson.

- Conduct a discussion of the review questions. The purpose is to make sure that students understand the main ideas and facts of this lesson.

- Have students respond to the questions involving interpretation and appraisal of judicial opinions in the cases of Hirabayashi, Korematsu and Endo.

- Pay special attention to the dissenting opinions of Justices Murphy and Jackson. Ask students to agree or disagree with the main ideas of these dissenting opinions.

Concluding the Lesson

- Ask students to identify the continuing constitutional significance of the events in this case study about Japanese Americans in World War II. Ask them to explain what Justice Jackson meant when he referred to the Court's decision in the Korematsu case as a "loaded weapon."

- Ask students to speculate about situations in the future that might prompt a governmental response similar to the actions directed toward Japanese Americans in World War II. What might happen in the future to occasion similar treatment of an unpopular minority group? How might the rights of all citizens be guarded against such a possibility? Ask students to tell what they would do as a member of a minority group facing suspension of constitutional rights. Ask them how they would respond to such a possibility as a member of the majority.

- It has been said that "tyranny can be practiced by a majority against a minority." Ask students this question: Is the treatment of Japanese Americans during World War II an example of tyranny of the majority?

- Conclude the lesson by pointing out that a true democracy is more than rule by the majority. It also involves protection of the rights and freedoms of minorities.

- Read this quote by the British historian, Lord Acton: "The most certain test by which we judge whether a country is really free is the amount of security enjoyed by minorities." Ask students to discuss Acton's idea with reference to the issues raised by this lesson.

Suggested Readings

Bosworth, Allan R. America's Concentration Camps (New York: W. W. Norton & Company, Inc., 1967).

This book tells the story of the Japanese Americans during World War II. It is easy to read. It includes discussion of the main constitutional issues and court cases discussed in this lesson.

Murphy, Paul L. Constitution in Crisis Times: 1918-1969 (New York: Harper & Row, Publishers, 1972).

This is an excellent discussion of constitutional development. Chapter 7 deals with constitutional issues during World War II.

Commission on Wartime Relocation and Internment of Civilians. Personal Justice Denied (Washington, D.C.: U.S. Government Printing Office, 1983).

This is a report about the internment of Americans of Japanese ancestry during World War II. It is based on testimony from 750 witnesses and a study of documents.

Suggested Films

RIGHTS, WRONGS AND THE FIRST AMENDMENT

The film uses such events as the Palmer Raids of World War I, forced relocation of Japanese Americans in World War II, hearings of the Cold War, conspiracy trials of the Vietnam conflict, and the Watergate invasions of privacy to trace the history of freedom of speech, freedom of the press and freedom of assembly in the U.S. It dramatizes the difficulties of integrating personal freedom with legitimate national security needs. Stuting Educational Films, 1974, 27 minutes.

THE CONSTITUTION AND MILITARY POWER

The film dramatizes the story of a U.S. citizen of Japanese ancestry who tries to avoid detention and relocation during World War II. The film follows his suit through the courts and also summarizes a previous related court decision of 1866, Milligan Ex Parte. From DECISION: THE CONSTITUTION IN ACTION series, National Educational Television, 1959, 29 minutes, black and white.

IV-14. THE LIMITS OF PRESIDENTIAL POWER: TRUMAN'S DECISION TO SEIZE THE STEEL MILLS

Separation of powers is a major principle of American government. Under the Constitution, Congress is to make laws, the President is to carry out laws and the courts are to interpret them.

Of course this separation is not complete. The system of checks and balances means each branch of government shares to some degree in the job of the others. The President may, for example, veto bills passed by Congress. Still, the idea of separation of powers is to prevent the same branch from making, enforcing and interpreting the laws.

President Harry Truman tested the limits of presidential power under the Constitution with an order for the federal government to take control of the nation's steel mills. Truman's order led to a major Supreme Court decision on the extent of presidential power.

Background of the Case

In the spring of 1952, President Harry Truman faced a difficult problem. The United States was in the middle of the Korean War, and the nation's steel workers were about to go on strike. Truman and his advisors feared a long strike could bring disaster. American troops in Korea might run short of badly needed ammunition and weapons.

The President acted forcefully. On April 8, a few hours before the strike was to start, Truman issued Executive Order 10340. This directed Secretary of Commerce Charles Sawyer to take control of the nation's steel mills and keep them running. The steel companies accepted the order but moved to fight Truman's action in court.

Taking control of the steel mills was not the only alternative open to Truman. The President had another way to deal with the strike. He chose not to use it.

In 1947 Congress had passed the Taft-Hartley Act. Under this law, the President could get a court order delaying the strike for 80 days. During this "cooling off" period, the union of steel workers and the steel mill owners would try to settle their differences.

Truman disliked the Taft-Hartley Act. He thought it was anti-labor. He had vetoed it in 1947, but Congress overrode his veto. He had never used the law and would not do so in the steel strike. Instead, the President issued Executive Order 10340 seizing the steel mills.

The steel companies quickly challenged Truman's action in the federal district court in Washington, D.C. Within a few days, the Supreme Court stepped in to settle the conflict. The case was called Youngstown Sheet and Tube Company v. Sawyer.

Constitutional Issue

President Truman's order was a remarkable assertion of presidential power. The President was not carrying out or acting under a law passed by Congress. There was no law authorizing a President to seize private property such as the steel mills. By his order, President Truman was, in effect, making law--a job reserved for Congress by Article I of the Constitution.

Had the President overstepped the constitutional boundary that separated the legislative and executive branches? Or did the Constitution give Truman powers to protect the nation in times of national emergency?

Arguments

The steel companies argued that the President's order was clearly unconstitutional. They said neither the Constitution nor existing laws gave him authority to seize private property. In addition, procedures set by Congress in the Taft-Hartley Act were already available to handle the strike. Thus, they claimed the President had exceeded his constitutional authority.

The President argued that his authority, as chief executive under Article II of the Constitution, gave him power to keep steel production going in a national emergency. In addition, he argued that his power as commander-in-chief allowed him to take actions necessary to protect the lives of American troops. This included making sure there was enough steel to produce weapons.

The Decision

Truman lost the argument. On June 2, the Supreme Court ruled 6-3 against the President. The majority of the Court held that Truman's seizure of the steel mills was an unconstitutional exercise of power.

Justice Hugo L. Black wrote the majority opinion. Black said the President had no power under the Constitution as chief executive or commander-in-chief to seize private property unless Congress authorized the seizure. The power to authorize such action, said Black, belonged to Congress not to the President.

Black noted that in writing the 1947 Taft-Hartley Act Congress had considered letting Presidents seize plants in case of a strike but rejected the idea. Thus, by his executive order Truman had attempted to make his own law. But the Constitution, Black said, did not permit this. The Constitution limited the President "to the recommending of laws he thinks wise and the vetoing of laws he thinks bad."

Justice William O. Douglas concurred. Douglas said he was shocked by the "legislative nature of the action taken by the President."

Three justices issued a strong dissent. They argued that in a grave national crisis, such as the Korean War, the President must be allowed to exercise unusual powers. Chief Justice Vinson wrote, "Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times." Vinson added that Truman's actions were in the tradition of extraordinary actions taken by Presidents like Lincoln, Cleveland, Wilson and Franklin Roosevelt during times of crisis.

Significance of the Decision

The immediate result of the Youngstown decision was to require the government to return the steel mills to their owners. Truman promptly complied with the Court's ruling even though he strongly disagreed with it. The steel strike went ahead and lasted for 53 days. Truman never used the Taft-Hartley Act to intervene. The President did claim that in the summer and fall of 1952 there were some shortages of ammunition as a result of the strike.

Truman later wrote that the Court's decision "was a deep disappointment to me." He added, "I think Chief Justice Vinson's dissenting opinion hit the nail right on the head, and I am sure that someday his view will come to be recognized as the correct one."

The President had every reason to be disappointed. The Youngstown case was one of the rare instances when the Supreme Court flatly told a President he had overstepped the limits of his constitutional power.

In this decision, the Court clearly established that there are limits on the powers a President can derive from the Constitution--even in a national emergency. For nearly twenty years presidential power had been growing because of a series of crises including the Great Depression and World War II. The Youngstown decision had the effect of slowing down this steady growth of the emergency powers of the Presidency.

This case shows how a strong President tried to expand the powers of the Presidency. The case also shows how the Supreme Court can act to preserve the separation of powers in our system.

Reviewing the Case

1. Describe the events leading to the case.

2. Why did President Truman not want to use the Taft-Hartley Act to settle the steel strike?

3. What was the issue in the *Youngstown* case? What were the arguments on each side?

4. What did the Court decide?

5. What reasons did the majority give for its decision?

6. What position did Chief Justice Vinson take in his dissent?

LESSON PLAN AND NOTES FOR TEACHERS

IV-14. The Limits of Presidential Power: Truman's Decision to Seize the Steel Mills

Preview of Main Points

In the case of Youngstown Sheet & Tube v. Sawyer--often known as the steel seizure case--the Supreme Court struck down President Truman's Executive Order to seize the nation's steel mills in order to prevent a strike during the Korean War. The case involved the principle of separation of powers with the Court ruling that the President had no power under the Constitution to seize private property unless Congress authorized the seizure.

Connection to Textbooks

This lesson can be used with government textbook material on separation of powers, the powers of the President or the powers of Congress. The lesson could enrich history text discussions of separation of powers, the Truman Presidency or the growth of presidential power.

Objectives

Students are expected to:

1. explain the circumstances leading up to the Youngstown case;
2. identify the key participants and constitutional issues involved in the Youngstown case;
3. identify the arguments presented by both sides in the case;
4. explain the immediate impact of the Court's decision;
5. explain the longer-term significance of the Court's decision;
6. use information in the case to make a judgment about the Court's decision.

Suggestions for Teaching the Lesson

Opening the Lesson

- Explain to students how the lesson is connected to their textbook material. Review briefly the meaning of separation of powers.

Developing the Lesson

- Have students read the case study and complete the questions under "Reviewing the Case."

Concluding the Lesson

- Conduct a discussion which gives students an opportunity to make judgments about the Court's decision. Prompt the discussion by asking students these questions:

  --Do they agree with the majority opinion or with the dissent? Why?

  --What could be the consequences of letting Presidents expand their power as they saw fit?

  --On the other hand, what might be the consequences of limiting a President's ability to act forcefully to cope with national emergencies?

Suggested Reading

Marcus, Maeva. *Truman and the Steel Seizure Case: The Limits of Presidential Power* (New York: Columbia University Press, 1977).

This book is a case study about the constitutional significance of President Truman's decision to have the federal government take over the steel mills during a national emergency. The author examines events leading to Truman's decision, the Supreme Court decision that disallowed the President's action and the legal and social consequences of the Court's decision.

IV-15. YOU BE THE JUDGE: CAMARA V. THE MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

How do Supreme Court Justices arrive at their decisions? What factors do they consider when they decide a case?

In major decisions Justices usually take four factors into account: (1) the facts of the case, (2) the Constitution, (3) precedents or earlier court decisions in similar cases and (4) the arguments presented by attorneys for both sides in the case.

You will use these four factors to decide an actual case as Supreme Court Justices do. The case involves building inspectors, an angry tenant, the 4th Amendment, and a conflict between a government's duty to promote public health and an individual's right to privacy. These issues came before the Supreme Court in the case of *Camara v. The Municipal Court of the City and County of San Francisco*.

Facts of the Case

Supreme Court Justices have no fact finding authority as trial court judges do. Rather, they use the facts as taken from the trial court record to decide whether some action or law violated the Constitution or to interpret the meaning of a federal law.

Thus, Justices must know the facts to reach a decision. Here are the facts of the Camara case for you to consider, as the Justices did.

Refusing an Inspection. Roland Camara lived on the ground floor of a three-story apartment building in San Francisco. Camara rented part of the ground floor primarily for use as a bookstore, but he also lived in the rear of the store.

Part III of the San Francisco Municipal Code required the Department of Public Health to inspect all apartment houses every year. On November 6, 1963, Inspector Nall went to the premises to make the required inspection. Nall requested permission to enter Camara's apartment. Camara refused to let him in.

Inspector Nall returned on November 8, 1963, and again requested permission to enter and inspect. Camara refused again.

Action Against Camara. The San Francisco Code did not permit forced entry in such situations or provide ways for inspectors to obtain a search warrant. Thus, Camara was mailed a notice to appear in the District Attorney's office to explain his actions. Camara did not appear and for a third time refused to let inspectors enter his apartment.

Camara was then arrested and charged with a violation of the Municipal Housing Code. He responded to the complaint against him in Municipal Court by arguing that the part of the housing code involved was unconstitutional. Camara lost his case in several lower appeals courts. Finally, in 1967 the Supreme Court heard the case.

The issue that came to the Supreme Court was: Did the San Francisco building officials have the right to inspect Camara's residence without a search warrant? Or were such inspections a violation of Camara's 4th Amendment rights against "unreasonable searches and seizures"?

The Constitution

The Camara case involved the meaning of the 4th Amendment protection against "unreasonable searches and seizures." That Amendment says:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Over the years "unreasonable searches and seizures" had been defined by the Supreme Court to mean any search by police officers of persons accused of crime without a proper warrant. The only exceptions were for moving vehicles or searches taking place during an arrest itself.

The Camara case, however, presented a different constitutional question. What about routine fire and health inspections of buildings by city officials like those in San Francisco? These so-called "administrative searches" normally did not involve criminal prosecutions. Their purpose was to promote public health and safety.

Did the 4th Amendment also apply to such inspections? Did the ban against "unreasonable searches and seizures" require public health or fire officials to obtain a search warrant to conduct inspections? Or did the 4th Amendment protections apply only in criminal cases where people were accused of a crime?

Precedent

To help answer these questions the Justices would look to precedents, the decisions of earlier courts in similar type cases. How did earlier courts interpret the meaning of the 4th Amendment?

The key precedent was the case of *Frank v. Maryland* (1959). Aaron D. Frank was a homeowner in Baltimore, Maryland. A health inspector found evidence of rats in the area of Frank's home. This finding could be considered probable cause for searching his home. The inspector requested entry to Frank's home. He did not have a search warrant. Frank denied entry claiming he was protected by the 4th Amendment.

The Supreme Court ruled against Frank. In the Frank case, the Court linked the 4th Amendment to the 5th Amendment's ban against forcing a person "in any criminal case to be a witness against himself." It ruled that the main purpose of the 4th Amendment was to protect individuals from arbitrary searches conducted as part of a criminal investigation. Since the *Frank* search was for the purpose of inspecting for rats and no criminal charges were involved, a search warrant was not needed.

Thus, the *Frank* case set a key precedent. The 4th Amendment did not require city officials to obtain a search warrant for inspections made as part of fire and health inspections. The 4th Amendment only protected people against "unreasonable" searches where the purpose of the search was to find evidence for a criminal investigation.

The *Frank* precedent meant that if the Justices deciding the *Camara* case were to rule a search warrant was required for health and fire inspections, they would overturn the *Frank* case of 1959. That is, they would be deciding that the earlier Court's interpretation of the Constitution in the *Frank* case was wrong. They would be saying that the 4th Amendment protections applied to people whether or not they were accused of crime.

Arguments By Attorneys

Lawyers for the two sides in a Supreme Court case present oral arguments and file briefs (written arguments) with the court. Justices consider these arguments as they try to apply the Constitution and precedents to the case. You should let them help you decide.

Arguments For Camara. The lawyers for Camara argued the precedent set by the case of *Frank v. Maryland* should be overruled. Camara's lawyers interpreted the 4th Amendment as a broad protection against invasion of privacy by government officials such as the San Francisco inspector. They argued the Frank decision had wrongly tied the 4th Amendment protection against unreasonable searches and seizure to the 5th Amendment.

Camara's lawyers cited numerous precedents to demonstrate that the 4th Amendment protection was much broader. They pointed out that in Mapp v. Ohio (1961) the Court had found the provisions of the 4th and 5th Amendments were each "complementary to, although not dependent upon, that of the other."

Arguments For San Francisco. The lawyers for San Francisco and the state of California argued that, "the issue in the case was the right of a local community to enact ordinances requiring the occupant of a residence to submit to routine, duly authorized health inspections, without a warrant." They claimed that the reasoning in Frank v. Maryland was consistent with this view.

In addition, they claimed there were obvious differences between a health inspection and a search for criminal evidence. Each should be subject to different standards. Thus, as long as inspection procedures were reasonable, as they were in San Francisco, there was no need for a search warrant. Indeed, they argued that requiring a search warrant would give no more protection against inspection and could even lessen a person's privacy if an inspector used a warrant at an inconvenient time.

Amicus Curiae Briefs. In important cases, the Supreme Court allows parties not involved directly in the case, but with an interest in its outcome, to also file briefs. These are called amicus curiae -- friends of the Court -- briefs.

Three groups filed amicus curiae briefs in support of Camara. One was an organization called Homeowners in Opposition to Housing Authoritarianism. They argued that it was impossible to actually distinguish inspections for the public welfare and searches for criminal activity. Thus, search warrants should be required for both.

Two amicus curiae briefs were filed in support of San Francisco. One was by the Commonwealth of Massachusetts. The Massachusetts group argued that search warrants were a concept which "belong uniquely to criminal law." So many inspections were carried out that if warrants were required, judges who had to issue them would simply be acting as rubber stamps for inspectors.

You Decide

As Justices of the Supreme Court do, you have now examined the facts, the Constitution, the precedents and the arguments related to the case of Camara v. The Municipal Court of the City and County of San Francisco. Now it is time for you to make a decision.

To make a decision follow these steps.

(1) Select the side you would rule for.

(a) Rule for Camara and overturn the Frank case. This means requiring city inspectors to obtain a warrant to enter and inspect private residences if the person refuses to let them in.

Meaning of the Constitution. This ruling would be a broad interpretation of protections offered by the 4th Amendment. You would be interpreting the 4th Amendment's ban on "unreasonable searches and seizures" to be independent of the 5th Amendment and to cover inspections for public safety as well as criminal investigations.

(b) Rule for San Francisco and uphold the Frank case. This means allowing city officials to enter and inspect private residences, such as Camara's, without a search warrant.

Meaning of the Constitution. This ruling would be a narrow interpretation of protections offered by the 4th Amendment. You would be interpreting the 4th Amendment's ban on "unreasonable searches and seizures" to be linked to the 5th Amendment. Thus, the 4th Amendment protection would only apply in criminal cases.

(2) Identify and briefly list the consequences of your choice for these groups: city inspectors, the owners of apartment buildings, local judges.

(3) Prepare an "opinion" by listing the reasons for your choice. Explain in your opinion how your decision relates to the Frank case.

THE SUPREME COURT DECIDES

The Supreme Court ruled (6-3) in favor of Camara. Thus, the Court overturned *Frank v. Maryland*.

The Majority Opinion. Justice White wrote the majority opinion. He said that the purpose of the 4th Amendment was to protect individuals from arbitrary searches of their homes. "A search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant."

White declared that general inspections to enforce health and safety codes did not require search warrants. But if a search is refused, the city must secure a warrant. Thus, the Court set forth a broad interpretation of the 4th Amendment. It held that an individual does not have to be suspected of a crime to be covered by the 4th Amendment.

Justice White drove home his point by stating:

> The final justification suggested for warrantless administrative searches is that the public interest demands such a rule.... But we think this argument misses the mark. The question is not, at this stage at least, whether these inspections may be made, but whether they may be made without a warrant.... The question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.... It has nowhere been argued that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement.

A Dissenting Opinion. Not all the justices agreed. Justice Tom Clark wrote a dissenting opinion. He argued that the 4th Amendment did not guarantee complete individual privacy. It forbid only "unreasonable" searches. For over 150 years, he noted, courts have allowed municipalities the right to inspect without a warrant.

Clark believed that thousands of inspections would be denied. He argued that since the majority held that warrants must be obtained after a refusal of entry, warrants would be needed for nearly every inspection. Warrants would have to be printed up in pads of a thousand or more--with space for the street number to be inserted--and issued by judges in broadcast fashion. This degrades the search warrant. He would have had the Court uphold *Frank v. Maryland*.

LESSON PLAN AND NOTES FOR TEACHERS

IV-15. You Be the Judge: Camara v. The Municipal Court of the City and County of San Francisco

Preview of Main Points

This lesson focuses on how the Supreme Court actually makes decisions. Students (working indivudally or in small groups) decide the Supreme Court case of Camara v. The Municipal Court of the City and County of San Francisco (1967). The lesson gives students the facts of the case, the relevant parts of the Constitution, a key precedent and the lawyers' arguments in the case. After students make their own decision they examine how the Supreme Court actually decided the case by examining excerpts from the Court's opinion.

Connection to Textbooks

This lesson can be used with government textbook material on the judicial process, the Bill of Rights or the Supreme Court. It can be used with history textbook discussions of the Bill of Rights or the Supreme Court. The lesson provides a more detailed look at how judicial decisions are reached than textbooks are able to do.

Objectives

Students are expected to:

1. identify the facts and constitutional issue in the Camara case;
2. make a judgment about the constitutionality of actions of San Francisco city officials and interpret the meaning of the 4th Amendment's ban on "unreasonable searches and seizures";
3. give their own decisions and reasoning about the Camara case;
4. identify reasons presented in the majority and minority opinions;
5. compare that reasoning with their own (group) reasoning;
6. develop a greater understanding of the process of judicial decision-making.

Suggestions For Teaching The Lesson

This lesson can be used as an "in-depth" study accompanying the textbook discussions of the Bill of Rights, the judicial process or the Supreme Court.

Opening The Lesson

- Preview the main part of the lesson for students.
- Explain how this lesson is connected the the material they have just studied in the textbook.

Developing The Lesson

- Have students read the case study. Do not distribute the separate sheet titled "The Supreme Court Decides."
- Have students complete "You Decide" located at the end of the reading. Students may complete "You Decide" working individually or in small groups.
- If students are to work in small groups, divide the class into groups of five or seven (or any uneven, manageable number). Have the groups quickly choose a Chief Justice to lead the discussion and to report their decision to the class later. (You may want to appoint the Chief Justice to save time. One quick way to make the selection is to have students appoint the one whose birthday comes last in the year, the youngest member, etc.) The group should discuss and decide the case. You may need to remind them to pay attention to the facts, the Constitution, the precedent, and the lawyers' arguments. They should also agree on their reasons. If this is not possible in some groups, one or more of the students may offer a minority opinion.
- Have the "Chief Justice" of each group report briefly on the group's decision. Reasons should be presented in support of the decision. Allow any minority opinions to be given also.

Concluding The Lesson

- Hand out the page titled "The Supreme Court Decides." After students have read it, conduct a brief discussion of the following questions.

  1. What was the majority decision?
  2. What reason(s) did the justices give for their decision?

3. What reason(s) did the minority justices give for their dissent?

4. With which side did your group's decision agree?

5. Were your reasons similar to the Court's?

- Alternatively, you may wish to omit the group discussions. You may instead conclude the lesson with a discussion of these questions based on students' individual answers to "You Decide."

CHAPTER V

LANDMARK CASES OF THE SUPREME COURT

Overview for Teachers

This chapter includes 20 short lessons, which treat landmark decisions of the Supreme Court. These lessons are intended as brief summaries or digests not as in-depth case-studies. Each lesson concisely presents the background, issue and decision of a landmark case. The constitutional bases and significance of each decision is highlighted.

These lessons can help enlarge upon the capsule comments about landmark cases often found in textbooks. They may be used directly with students or as reference material for your own lectures and discussions.

Each lesson contains a worksheet, to guide analysis of the case by students. You may have students read the entire lesson, complete the worksheet and discuss their responses.

Alternatively, you may blank out the section of the lesson entitled "The Decision" and distribute only the first parts of the lesson. After reading about the facts of the case and the constitutional issue involved, students could reach their own decision on the case. Students could then compare their decision with the Court's ruling as described in the lesson and complete the worksheet accompanying the lesson.

The cases included in this chapter do not, of course, comprise an exhaustive list of significant Supreme Court decisions. At the same time, every case here qualifies as a landmark decision. The cases included in this chapter come from two sources:

(1) John Garraty, ed., Quarrels That Have Shaped the Constitution (New York: Harper & Row, Publishers, 1962); and (2) Duane Lockard and Walter Murphy, Basic Cases in Constitutional Law (New York: Macmillan Publishing Co., 1980). Both volumes include discussion of a small number of Supreme Court cases, which in the opinion of experts, are landmarks in constitutional development.

Garraty believes that knowledge of these landmark cases should be an integral part of the education of citizens. He argues: "To try to understand the modern Constitution without a knowledge of these judicial landmarks would be like trying to understand Christianity without the Bible. (p.viii)."

List of Lessons in Chapter V

V- 1. Marbury v. Madison (1803)
V- 2. McCulloch v. Maryland (1819)
V- 3. Dartmouth College v. Woodward (1819)
V- 4. Gibbons v. Ogden (1824)
V- 5. Charles River Bridge v. Warren Bridge (1837)
V- 6. Dred Scott v. Sandford (1857)
V- 7. Ex parte Milligan (1866)
V- 8. Munn v. Illinois (1877)
V- 9. Plessy v. Ferguson (1896)
V-10. Northern Securities Company v. United States (1904)
V-11. Muller v. Oregon (1908)
V-12. Schenck v. United States (1919)
V-13. Schechter v. United States (1935)
V-14. United States v. Curtiss-Wright Export Corp. (1936)
V-15. Brown v. Board of Education (1954)
V-16. Gideon v. Wainwright (1963)
V-17. Reynolds v. Sims (1964)
V-18. Miranda v. Arizona (1966)
V-19. Heart of Atlanta Motel v. United States (1964)
V-20. United States v. Nixon (1974)

V-1. MARBURY V. MADISON (1803)

In the election of 1800, the United States had its first change of political party in the Presidency. Republican Thomas Jefferson defeated Federalist John Adams. The Federalists greatly feared that the new government would ruin the country. However, there was one thing they could do to ensure their continuing influence in the national government. They could see to it that the courts were filled with loyal Federalists. Accordingly, Congress created new circuit courts for 16 judges (later repealed) and authorized President Adams to appoint as many justices of the peace for the District of Columbia as he thought necessary.

Late at night on his last day in office, Adams signed the commissions for the new circuit court judges and 42 justices of the peace. But the next day James Madison, the new Secretary of State, found that William Marbury's commission as justice of the peace had somehow not been delivered. President Jefferson instructed Madison not to deliver it. Marbury then applied to the Supreme Court for a writ of mandamus -- a court order directing Madison to deliver his commission.

The Constitutional Issue

The case nearly created a constitutional crisis in the new government. If the Court ordered delivery of Marbury's commission, President Jefferson might refuse to obey the order. The Court, struggling to establish its authority as an equal branch of government with Congress and the President, had no way to enforce the order. Yet if the Court did not issue the writ, it would be publically admitting its lack of power.

The Decision

Chief Justice John Marshall wrote the unanimous opinion of the Court. Marbury was due his commission, Marshall stated. However, the Court had no power to order the delivery because the portion of the Judiciary Act of 1789 giving the Court jurisdiction over the matter was unconstitutional.

This was the first time that an act of Congress was declared unconstitutional by the Supreme Court. Marshall argued that the Constitution was the supreme law and the Court had the authority and duty to strike down any law in conflict with the Constitution.

This decision avoided a direct confrontation with President Jefferson. Since it was favorable to Jefferson on the immediate point of law, the decision made rejection by the President virtually impossible. In a technical way the Court had limited its own jurisdiction by ruling it had no power to order delivery of Marbury's commission. But in the broader sense, it had enlarged its power through its claim of judicial review.

The Marbury decision provided the constitutional base for the Supreme Court's power of judicial review over the actions and laws of the federal government. This is the Court's power to review laws passed by Congress and actions of the President and declare invalid those it finds in conflict with the Constitution. The Court's decision laid the foundation on which the Supreme Court eventually developed into a truly equal branch of the national government. Full acceptance of judicial review, however, had to await the post-Civil War period.

WORKSHEET: MARBURY V. MADISON (1803)

1. What was William Marbury's complaint? ____________________

____

2. What did he want the Supreme Court to do about it? _____

____

____

3. What constitutional dilemma was created by Marbury's case:

____ a. Any decision would make it too easy for Presidents to issue writs of mandamus.

____ b. The Court wanted to maintain its authority, but there seemed to be no decision that would allow that to happen.

____ c. The Court feared Congress would ignore its decision and not enforce the writ of mandamus.

4. Did the Court's decision force Madison to give Marbury his commission? ____________________

5. What did John Marshall's opinion say about the Court's power? ____________________

____

____

6. Which of the following are correct statements about the effects of this decision on the American Government?

____ a. It has allowed Congress to dominate the other two branches.

____ b. It has provided the basis for judicial review of Congressional Acts.

____ c. It has made the Presidency stronger.

____ d. It has increased the power of the Supreme Court.

LESSON PLAN AND NOTES FOR TEACHERS

V-1. Marbury v. Madison (1803)

Preview of Main Points

This lesson is a digest of one of the most significant Supreme Court decisions in American history. The decision declared, for the first time, an act of Congress as unconstitutional. The decision established the Court's power of judicial review.

Connection to Textbooks

The case was the first of several in which the Court established the principle that national law was in all instances the supreme law. The digest could be used to reinforce study of Marbury v. Madison in government or history textbooks. It can also be used to supplement textbook discussions of judicial review.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. explain the dilemma faced by the Supreme Court in deciding the case;
3. identify how the decision established the Court's power of judicial review over the actions of the national government;
4. explain the significance of the decision.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case that laid the foundation for the Supreme Court developing into a co-equal branch of government with Congress and the President.
- Explain that the case also illustrates two features about the Supreme Court: (1) cases over seemingly minor issues can have very significant results and (2) the Court cannot depend simply on its constitutional authority but often must act in ways that avoid direct confrontation with the other branches of government.

Developing The Lesson

- Have the students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision and the significance of the decision.

Note: The Court ruled a portion of the Judiciary Act unconstitutional because it gave the Supreme Court *original jurisdiction* in the issuing of writs to officers of the federal government. Marshall pointed out, however, that Article III of the Constitution spelled out precisely the Supreme Court's original jurisdiction and it did not mention issuing such writs. Rather, the Constitution said that on all matters not mentioned in the Constitution the Court would have only *appellate jurisdiction*. Since Congress cannot change what the Constitution says, the portion of the Judiciary Act giving the Court authority to issue a writ was in violation of the Constitution and unconstitutional.

Concluding The Lesson

- The lesson concludes by noting that, "full acceptance" of judicial review had to await the post Civil War period. You might point out to students that the Court did *not* exercise judicial review over an act of Congress again until 54 years later in the Dred Scott case (1857). And, as it turned out the Court was bitterly attacked for its ruling in that case. Hence, before the 1860's Americans looked fully as much to Congress, the President and national statesman as they did to the Supreme Court for authoritative interpretations of the meaning of the Constitution. During this period Congressional debate was a major source of constitutional interpretation and it was generally assumed that "the people of the United States could make the final interpretation of the Constitution themselves through the politically responsible departments or through amendments."*

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*Alfred H. Kelly and Winfred A. Harbison, *The American Constitution* (5th ed.) (New York: W.W. Norton & Company, Inc., 1976), p. 218.

- By the late 1800's, however, this theory of constitutional interpretation was replaced by the principle of judicial review first established in Marbury v. Madison. Since Marbury several hundred state laws and approximately 100 federal laws have been declared unconstitutional by the Supreme Court. This number is small relative to the total number of laws passed, but declaring a law null and void may stop a long line of similar legislation.

- Point out to the class that in his opinion Marshall said: "A law that is repugnant to the Constitution is void."

  Ask students why that quote illustrates the idea of judicial review.

Suggested Reading

Garraty, John A. (ed.) Quarrels That Shaped the Constitution (New York: Harper and Row, Publishers, 1964).

This book contains 16 chapters providing interesting descriptions of 16 landmark Supreme Court decisions, including Marbury v. Madison. The chapters would be readable by most high school students.

Suggested Film

Decision for Justice

The film presents a dramatic reenactment of John Marshall's contribution to the establishment of the Supreme Court as the ultimate interpreter of the Constitution. No distributor noted, 1955, 27 minutes, black and white.

V-2. MC CULLOCH V. MARYLAND (1819)

Congress chartered the Second Bank of the United States in 1816 to provide a sound national currency. But the bank was very unpopular in many states. Maryland levied a tax on all banks not chartered by the state. McCulloch, the cashier of the Baltimore branch of the Bank of the United States refused to pay the tax. Maryland sued McCulloch and won in the Maryland courts.

Officials of the national bank appealed the Maryland court's decision to the U.S. Supreme Court. They claimed the state tax was unconstitutional interference with the federally chartered bank. Maryland argued that Congress went beyond its powers when it chartered the bank. The state claimed it had the power to tax the bank.

The Constitutional Issue

The Constitution did not expressly give Congress the power to charter a national bank. However, Article I, Section 8, Clause 18 did grant Congress the power to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers . . . ." Did this "necessary and proper" clause mean Congress could only do those few things which were indispensable for carrying out its listed, or delegated, powers? Or did it mean Congress could do nearly anthing it wanted, such as chartering a national bank, to carry out its delegated powers?

In addition, did states have the power to tax the operation of a national bank? Which was supreme, national law or state law?

The Decision

In an unanimous decision, the Court upheld the power of Congress to create a national bank. John Marshall wrote that it was not necessary for the Constitution to expressly authorize Congress to establish a bank. The power to do so was implied from Congress' expressly listed money powers pertaining to taxing, spending and the like.

At the same time, the Court ruled that the states could not tax the bank. Marshall declared that allowing states to tax part of the national government would interfere with national supremacy. "The power to tax involves the power to destroy . . . ."

Thus, the Court established two important constitutional principles. The first, the implied powers doctrine, said the "necessary and proper clause" of the Constitution should be interpreted broadly to let Congress choose whatever means it wanted to carry out the powers the Constitution expressly gave it. Marshall wrote, "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate . . . . which are not prohibited . . . are constitutional." Today, nearly all bills passed by Congress are based to some extent on the "necessary and proper" clause.

The second principle, national supremacy, forbids the states to intrude into the constitutional operations of the national government. The Court's decision let the young national government expand to meet the demands of a growing nation. Thus, it allowed the Constitution to become a "living document."

WORKSHEET: MC CULLOCH V. MARYLAND (1819)

1. Why did the State of Maryland sue McCulloch?

   ____

   ____

2. Who had created the Second Bank of the United States?

   ____

3. What did the "necessary and **proper**" clause have to do with the issue in this case?

   _____ a. Maryland claimed it had the "necessary and proper" authority under Article I to tax the national bank set **up by** Congress.

   _____ b. The national government claimed Congress had authority under the "necessary and proper clause" to create a bank even though such a bank was not mentioned in the Constitution.

   _____ c. McCulloch claimed the "necessary and proper" clause gave the Supreme Court the power to decide the case.

4. Which side won the decision? ______________________

5. What two constitutional principles were established by the Court's decision?

   (a) ____

   (b) ____

6. Which of these statements is correct about the Supreme Court's decision? Be prepared to defend your answers.

_____ a. Article I, Section 8, Clause 18, U.S. Constitution gives Congress the power to do more than what is specifically said in the Constitution.

_____ b. The additional powers, beyond those listed, are called reserved powers.

_____ c. The national government's powers may not be limited by a state government's action.

_____ d. A state, such as Maryland, is the final judge over what takes place within its boundaries.

LESSON PLAN AND NOTES FOR TEACHERS

V-2. McCulloch v. Maryland (1819)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case. The case established two key constitutional principles: (1) the doctrine of implied powers and (2) the idea of national supremacy.

Connection to Textbooks

The *McCulloch* case could be used with government textbook discussions of the powers of Congress, the development of the Constitution or the Supreme Court. It could be used to supplement history textbook discussions of the Monroe Presidency or the growth of national power.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. identify the role of the "necessary and proper" clause in the case;
3. explain the two constitutional principles -- implied powers and national supremacy -- established by the decision;
4. identify the long-term effect of the decision on the growth of the national government.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are going to analyze a Supreme Court decision that allowed the national government to develop its powers to meet the country's needs.

Developing The Lesson

- Have students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- After students complete the worksheet, conduct a discussion about it.

- Be certain the students comprehend the key role of the "necessary and proper clause" in the case and the effect of the case on the growth of national government powers.

Concluding The Lesson

- Tell the class that John Marshall, who wrote this opinion, took part in many great Supreme Court decisions including the landmark case of *Marbury v. Madison*. Yet a leading Constitutional scholar has said that *McCulloch v. Maryland* "is by almost any reckoning the greatest decision John Marshall ever handed down." *Ask Students*: Why would a scholar make that statement? What was so important about the case?

Suggested Reading

Garraty, John A. (ed.) *Quarrels That Have Shaped The Constitution* (New York: Harper and Row, Publishers, 1964).

Chapter 3 of this book, pages 49-61, includes a very interesting discussion of the *McCulloch v. Maryland* case.

V-3. DARTMOUTH COLLEGE V. WOODWARD (1819)

Dartmouth College was established originally by a charter from King George III. After the United States was formed, the agreement with the King became an agreement with the state of New Hampshire. In 1816 that state's legislature passed several amendments to the college's charter. The effect was to change the private college into a state university.

Alumni and other friends of Dartmouth College objected. They believed the state legislature should not be allowed to destroy the private nature of their college by turning it into a publicly controlled institution. Besides, this would change the functioning of the college as its founder had intended.

Daniel Webster, arguing for the college trustees, maintained that the legislature had violated Article I, Section 10, of the Constitution, which provides that "No state shall . . . pass any . . . law impairing the obligation of contracts . . . ." In an earlier case, the Supreme Court had ruled that a land grant is a contract. Webster now argued that "a grant of corporate powers and privileges is as much a contract as a grant of land."

The Constitutional Issue

Is a charter a contract? Did the Constitution's contract clause protect private corporate charters, such as Dartmouth's.

The Decision

The Court decided 5-1 for Dartmouth College. Chief Justice John Marshall wrote the opinion, which held that the charter of a private corporation was a contract. Thus, the state legislature was forbidden by the U.S. Constitution to change it.

The decision was important in increasing the power of the national government relative to the states. First, it stated that the U.S. Supreme Court could invalidate state laws when it found those laws to be unconstitutional. Further, along with Fletcher v. Peck (1810), it was the beginning of restrictions upon state legislatures with regard to corporations. The national government would not allow state legislatures to void or change charters.

The Dartmouth decision did not draw much attention from the press at the time. Yet it was one of the early Court's important decisions. The nation was young and business corporations were just forming. The Court's decision gave business corporations security against legislative interference.

Such security was important to investors who might put money into new corporations and thus help them get started. Investors could be sure that rights given them by one state legislature would not be taken away on the whims of future legislators. This greatly encouraged the development of railroad and insurance corporations, which played a key role in the country's economic development.

WORKSHEET: DARTMOUTH COLLEGE V. WOODWARD (1819)

1. In this case, who was complaining about a violation of contract? ______________________________

2. What did Article 1, Section 10 of the Constitution have to do with the complaint in this case? Select correct answers among the following statements. Be prepared to explain your answers.

____ a. Dartmouth argued that a charter is a contract. Therefore, the legislature could not overturn the terms of that charter.

____ b. The trustees of the College believed the legislature had violated their contract with New Hampshire.

____ c. The legislature believed they could amend charters granted by earlier legislatures.

3. Did the decision in this case favor:

____ a. Dartmouth College trustees

____ b. New Hampshire legislature

4. What rights were gained by the winners in this case?

____

5. How was the Constitution used to support the decision in this case? Hint: What meaning did the Court give to charter?

____

____

____

6. Which of the following are correct statements about the effects of this decision on America?

____ a. It increased the power of the states.

____ b. It encouraged the growth of business organizations.

____ c. State legislatures may control business to a great extent by changing bad charters.

____ d. It increased the power of the national government over the states.

LESSON PLAN AND NOTES FOR TEACHERS

V-3. Dartmouth College v. Woodward (1819)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case involving the contract clause in Article I, Section 10 of the Constitution. In this case, the Court ruled that a charter granted to a college was a contract and could not be changed by a state legislature.

Connection to Textbooks

The Dartmouth decision was one of several under the leadership of John Marshall in which the Court expanded the power of the national government over the states. The lesson could be used with government textbook material on the Supreme Court or with history textbook material on the early years of the Supreme Court or the growth of the American economy.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. explain the connection of this issue to the "contract clause" of the Constitution;
3. identify the rights won and lost by contending parties;
4. explain the impact of the decision on the growth of national government power and the development of commerce in the United States.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students that they are to analyze a Supreme Court case that helped spur the growth of American commerce and industry when the nation was young.

Developing The Lesson

- Have students read the digest of the Dartmouth College case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand the meaning of contract, the issue surrounding the Dartmouth contract and the significance of the Court's decision.

Concluding The Lesson

- Ask students to give several examples of contracts in daily life. Ask them why keeping a contract is important.
- Tell students that in 1820, a year after the Dartmouth decision, the nation's leading magazine said of the case, "Perhaps no judicial proceedings in this country ever involved more important consequences." Ask students to explain why the magazine might come to such a conclusion.

Suggested Reading

Current, Richard, "The Dartmouth College Case," in J. Garraty (ed) Quarrels That Have Shaped the Constitution (New York: Harper Torchbooks, 1975), pp. 15-30.

V-4. GIBBONS V. OGDEN (1824)

In 1807, Robert Fulton made the first successful steamboat run from New York City to Albany. The New York legislature soon gave Fulton and a partner exclusive rights to navigate the waters of New York state. They, in turn, sold to Aaron Ogden the right to operate between New York City and the New Jersey shore.

Meanwhile, Thomas Gibbons secured a coasting license from the U.S. Congress to run two steamships between New York and New Jersey. Competition between Gibbons and Ogden became fierce. Finally Ogden petitioned the New York courts to order Gibbons to discontinue his business. They did so and Gibbons appealed the New York Court's decision to the Supreme Court.

Gibbons argued that under the Constitution Congress had complete power to regulate commerce. Therefore, his federal license to operate steamboats was valid. Ogden countered that the commerce power applied only to "transportation and sale" of goods, not to navigation. Navigation was left to the states to regulate. Therefore, his New York license was valid.

The Constitutional Issue

The case raised two key issues. First, what did "commerce" include? Did Congress have the power under the commerce clause (Article I, Section 8) to regulate navigation? Second, was that power exclusive or did the states also have power to regulate interstate commerce within their boundaries?

The Decision

The Court ruled for Gibbons. In doing so, it defined commerce broadly. Commerce is more than traffic, the Court said. It included all kinds of business and trade "between nations and parts of nations (the states)" including navigation.

The Court also ruled that, should a state law regulating commerce interfere with a federal law, the federal law was always supreme. This was why the New York law giving Ogden his license was invalid. The New York law interfered with the federal coasting law under which Gibbons got his license.

The Court, however, left open the second issue involved in the case. Thus, the Court did not resolve the question of whether states could regulate areas of commerce Congress had not regulated. Nor did the Court decide whether the states could regulate commerce simultaneously with Congress. These issues would have to be settled over the next several decades in many additional rulings by the Court.

The Gibbons case, however, set a basic precedent. The Court's decision began a vast expansion of federal control. It paved the way for later federal regulation of transportation, communications, buying and selling and manufacturing. In the Twentieth Century, for example, the Court has said that a farmer may be fined under the "commerce clause" for producing a small amount of wheat for his own use in violation of the quota set by the Department of Agriculture. Little economic activity remains outside the regulatory power of Congress today.

WORKSHEET: GIBBONS V. OGDEN (1824)

1. Where did Aaron Ogden get his license to operate steamboats?
____

2. Where did Thomas Gibbons get his license to operate steamboats? ______________________________

3. Why did Ogden petition the New York Courts? ______________
____

4. Why did Gibbons appeal the decision of the New York Courts to the Supreme Court? ______________________________
____

5. How did Gibbons use the "commerce clause" of the Constitution to support his position?

____ a. He claimed that the clause gave the President authority to invalidate all state licenses.

____ b. He claimed that the clause gave Congress power to regulate navigation and hence grant his license.

____ c. He claimed that the clause allowed the Supreme Court to issue the necessary licenses.

6. Who won the case? ______________________________

7. How did the Court define commerce in this decision?
____
____

8. Which of the following are correct statements about the outcome of this case?

____ a. Congress may regulate any matter that affects interstate commerce.

____ b. Congress' power over commerce stops at the state line.

____ c. Federal laws regulating commerce are supreme over state laws, should they conflict.

LESSON PLAN AND NOTES FOR TEACHERS

V-4. Gibbons v. Ogden (1824)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case that set the precedent for the expansion of Congress' power over commerce. The Court interpreted commerce broadly and ruled commerce included not only navigation, but all forms of commerce, trade and business.

Connection to Textbooks

The Gibbons case, along with McCulloch v. Maryland, was one of two landmark cases that greatly expanded the powers of the new national government at the expense of the states. This lesson could be used to reinforce government textbooks' brief treatments of the case or to supplement history text discussions of the growth of the American economy and federal power during the era of Chief Justice Marshall.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. explain the connection of this case to the "commerce clause"
3. identify the constitutional issues settled by this case and those left unsettled;
4. explain the impact of the decision on the growth of Congress' power over commerce.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students that they are to analyze a Supreme Court case that helped greatly expand the powers of the national government.

Developing The Lesson

- Have students read the digest of the Gibbons case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision, the constitutional basis of the decision and the constitutional significance of the decision.

Concluding The Lesson

- Point out to the class that John Marshall's decision in the Gibbons case has been called "the emancipation proclamation of American commerce." Ask students to explain what this statement means, given their knowledge of the decision.

Suggested Reading

Dangerfield, George, "The Steamboat Case" in J. Garraty (ed.) Quarrels That Have Shaped The Constitution (New York: Harper Torchbooks, 1974), pp. 49-62.

V-5. CHARLES RIVER BRIDGE V. WARREN BRIDGE (1837)

In 1828, the state government of Massachusetts granted a charter for construction of a bridge across the Charles River to connect Boston with Cambridge. This new bridge -- The Warren Bridge -- was to be built near an older bridge, the Charles River Bridge. Owners of the Charles River Bridge Company said that their charter, which had been granted in 1785, gave them the right to prevent construction of a new bridge. They claimed the new bridge could cause them a great loss of profits from tolls paid by users of their bridge.

Owners of the Charles River Bridge Company argued that creation of the Warren Bridge Company violated their charter, which thereby violated the "contract clause" of the United States Constitution. They pointed to the Supreme Court decision in Dartmouth College v. Woodward, 1819, which seemed to support their argument that the terms of a contract should not be violated. They complained that the Warren Bridge Company should not be allowed to compete with them.

The Constitutional Issue

Should a contract granted by a state government be interpreted so as to stop the state from granting another charter to build new public facilities that would meet important public needs?

The Decision

The court decided against the Charles River Bridge Company. The vote was 5-2. Chief Justice Roger Taney wrote the majority opinion, which emphasized that public charters must be interpreted so as to give the benefit to public and community needs. Thus, the state of Massachusetts had the right, under the Constitution, to charter the building of a bridge that would compete with another bridge it had contracted for earlier.

Chief Justice Taney was not ignoring the "contract clause" in Article I, Section 10 of the Constitution, which says that "No state shall . . . pass (any) law impairing the Obligation of Contracts." He believed in private property rights and the sanctity of contracts. However, he opposed interpretation of a contract so as to infringe upon the rights or needs of the public. The contract granted to the Charles River Bridge Company did not say specifically that no other company could build a bridge nearby. Thus, Taney and the majority of the Court would not allow the contract to be interpreted so as to give exclusive rights to the older and established Charles River Bridge Company.

The decision in this case opposed business monopolies when they seemed to hurt the public. Private businesses were encouraged to compete freely with one another. There was support for the right of state governments to decide, under the Tenth Amendment, whether or not to grant new charters to build new facilities to serve the public, such as highways, railroads and bridges.

WORKSHEET: CHARLES RIVER BRIDGE V. WARREN BRIDGE (1837)

1. In this case, who was complaining about violation of a contract? ______________________________

2. What did the "contract clause" of the Constitution have to do with the complaint in this case? Select correct answers among the following statements. Be prepared to explain your answers.

_____ a. The "contract clause" says that no state government has the right to pass a law overturning the terms of a contract made with a private business. The Charles River Bridge Company argued that the state of Massachusetts violated this part of the Constitution.

_____ b. Owners of the Warren Bridge believed that the state of Massachusetts had violated their contract with the Charles River Bridge Company.

_____ c. Owners of the Charles River Bridge believed they had a contract that banned construction of any other bridge near to their bridge.

3. Did the decision in this case favor the owners of the Charles River Bridge or the Warren Bridge? ____________

4. What rights were gained by the winners in this case?

____

____

5. How was the Constitution used to support the decision in this case? (Clue: How did the majority interpret the meaning of the "contract clause" of the Constitution?)

____

____

____

6. Which of the following are correct statements about the effects of this decision on Americans? Be prepared to explain your answers.

_____ a. Competition between businesses was encouraged.

_____ b. The right of state governments to make certain kinds of decisions was supported.

_____ c. The growth of transportation facilities used by the public was encouraged.

_____ d. Property rights in contracts were weakened.

LESSON PLAN AND NOTES FOR TEACHERS

V-5. Charles River Bridge v. Warren Bridge (1837)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case. The emphasis is on the Court's interpretation of the "contract clause", which enlarged competition between businesses providing public facilities. The way was opened for state governments to encourage extensive development of bridges, highways and railroads.

Connection to Textbooks

The Charles River Bridge Case exemplifies the Jacksonian point of view in a Supreme Court Decision. It was the first major decision of the court under Chief Justice Roger Taney, a protege of President Jackson. Thus, this case might be used in conjunction with American history textbook chapters on the Jackson Era. The leading textbooks tend to overload this landmark case in constitutional development.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. explain the connection of this issue to the "contract clause" of the Constitution;
3. identify rights that were won and lost by contending parties;
4. explain the effects of the decision in this case on states' rights, competition between businesses, development of public facilities and property rights.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students that they are to analyze a Supreme Court case that reflected certain ideals of Jacksonian Democracy, such as free enterprise, states' rights and public needs.

Developing The Lesson

- Have students read the digest of the Charles River Bridge Case.

- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision, the constitutional basis of the decision and the constitutional significance of the decision.

Concluding The Lesson

- Focus attention on the "contract clause" of the Constitution in Article I, Section 10. Emphasize that Chief Justice Taney was not disregarding the "contract clause" in this decision. Rather, he argued that, in this instance, the contract did not say precisely that the Charles River Bridge Company had a monopoly.
- Read the following quotation from Justice Taney's opinion in this case:

  > If a contract on that subject can be gathered from the charter, it must be by implication, and cannot be found in the words used . . . . In charters of this description, no rights are taken from the public, or given to the corporation, beyond those which the words of the charter, by their natural and proper construction, purport to convey.

  Ask students to explain Taney's reasoning by answering this question: Why did Taney believe that the Charles River Bridge Company could not use the "contract clause" as an argument in behalf of their claim in this case?
- Ask students to discuss this question: How did the decision in this case support Jacksonian values such as free enterprise, states' rights and the rights of common people?

Suggested Reading

Following is an interesting case study of the Charles River Bridge case written by an eminent historian, Henry Graff. It appears in a book about 16 landmark Supreme Court decisions.

Garraty, John A. (ed.). Quarrels That Shaped the Constitution (New York: Harper and Row, Publishers, 1964), pp. 62-76.

V-6. DRED SCOTT V. SANDFORD (1857)

When it was written in 1787 the Constitution, in effect, permitted slavery. Several of the Founding Fathers owned slaves. Others were opposed to slavery.

The problem of how to deal with slavery was a hotly contested issue during the Constitutional Convention, and it continued to be a problem that plagued the new nation. By the 1850's slavery was forbidden in some states and protected in others.

In 1834, Dred Scott, a black slave, was taken by his master to Rock Island, Illinois, where slavery was prohibited by law. He was later taken into the Wisconsin Territory, another area in which slavery had been forbidden. Scott was then brought back to Missouri, a slave state. Scott brought suit against his master claiming that he was a free man because he had resided in areas where slavery was forbidden.

The Constitutional Issue

The case involved two basic issues. First, was Scott, as a black slave, a citizen under the Constitution and thus entitled to sue for his freedom?

Second, by living on free soil did Scott gain the right to freedom which Missouri had to respect? This question involved a larger issue. Was the Missouri Compromise, which had made the territory of Wisconsin free soil, constitutional?

The Decision

By a 7 to 2 vote, the Court ruled against Scott. The Court said that under the Constitution slaves or the descendants of slaves could neither become citizens of the United States nor be entitled to the rights and privileges of citizenship. Thus, Scott must remain a slave. Chief Justice Roger Taney wrote that slaves, "are not included and were not intended to be included under the word 'citizens' in the Constitution."

The Court then went a step beyond the question of Scott's status. It ruled that the Missouri Compromise, a law passed by Congress banning slavery in certain territories, was unconstitutional. Taney said that Congress had no power to declare certain territories "free" of slavery. To do so, said Taney, would deprive slave-owning citizens, who came into such a "free" territory, of their property (i.e. slaves). According to Taney, this was a violation of the 5th Amendment ban against depriving citizens of property without due process of law.

The Dred Scott decision failed completely to help settle the slavery issue. It enraged many Americans and worsened the division between "slave states" and "free states." As a result, the decision contributed to the coming of the Civil War.

The Civil War finally ended slavery, and the 13th Amendment (1865) made it unconstitutional. The 14th Amendment (1868) gave blacks citizenship. Thus, the Dred Scott decision was overturned by amending the Constitution.

WORKSHEET: DRED SCOTT V. SANDFORD (1857)

1. What question did Dred Scott bring to the Supreme Court?

____

____

2. What facts made Scott think he could sue for his freedom?

____

____

____

3. Did the Court rule for or against Scott? ____________

4. Which of the following statements explain the Court's ruling in the Dred Scott case?

____ a. Under the Constitution slaves could not be citizens.

____ b. Slavery was to be prohibited in all new territories.

____ c. The 13th Amendment ending slavery was unconstitutional.

____ d. Congress had no constitutional authority to ban slavery in territories like Wisconsin.

5. Why did the Court rule that the Missouri Compromise was unconstitutional? (Clue: How did the Court interpret the 5th Amendment?) ______________________________

____

____

____

6. Which of the following Amendments eventually overturned the Dred Scott decision? Explain what each Amendment you choose did.

____ a. the 10th Amendment

____ b. the 13th Amendment

____ c. the 14th Amendment

____ d. the 17th Amendment

LESSON PLAN AND NOTES FOR TEACHERS

V-6. Dred Scott v. Sandford (1857)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case on the status of blacks under the Constitution. In this famous case, the Court ruled that blacks were not and could not become citizens of the United States. The Court also ruled the Missouri Compromise of 1820, which had banned slavery in the territories, was unconstitutional.

Connection to Textbooks

This lesson could supplement history textbook material on the causes of the Civil War and the abolition of slavery. It would strengthen government textbook material on the powers of the Supreme Court or the civil rights movement.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. identify the Court's two rulings in the case;
3. explain the relationship of the 5th Amendment to the Court's rulings on the Missouri Compromise;
4. explain the effects of the decision on blacks and the onset of the Civil War;
5. identify two constitutional amendments that overturned the decision.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are going to analyze a case thought by many to be the most ill-considered decision in the history of the Supreme Court.

Developing The Lesson

- Have students read the digest of the case.

- Ask students to use the worksheet, which follows the digest to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand that the Court dealt with two distinct issues in the case. (1) Could blacks be citizens under the constitution? (2) Could Congress ban slavery in the territories?

Concluding The Lesson

- Tell the class that one scholar has concluded that, "all in all, the Dred Scott decision did the Court profound and lasting harm." Ask why someone might arrive at such a judgment? How could the decision harm the Court?

  (Note: The decision damaged the prestige and authority of the Supreme Court by dividing the country and helping to bring on the Civil War. In addition, as attitudes toward blacks became more enlightened, the Court's ruling was seen as embarrassing to a democratic nation.)

Suggested Reading

Catton, Bruce. "The Dred Scott Case," in J. Garraty (ed.), Quarrels That Have Shaped The Constitution (New York: Harper and Row, Publishers, 1964), pp. 77-89.

Fehrenbacher, Don. The Dred Scott Case: Its Significance in American Law & Politics (New York: Oxford University Press, 1978).

V-7. EX PARTE MILLIGAN (1866)

In 1864, Lambdin P. Milligan was arrested by the general in command of the military district of Indiana. The Civil War still raged in other parts of the country. Federal agents alledged they had collected evidence of a conspiracy by Milligan and others to release and arm rebel prisoners so they could take part in an invasion of Indiana by Confederate troops.

Milligan was brought before a special military court instead of the regular civil courts that were still operating in Indiana. The military court convicted Milligan of conspiracy and sentenced him to death.

Early in the Civil War, President Lincoln had put huge sections of the country under military rule and replaced civilian trials with military courts for those accused of insurrection. Lincoln also suspended the writ of habeas corpus in such situations. This is a court order to an official who has a person in custody to bring the prisoner to court and explain why the person is being detained. This is a basic civil liberty that prevents arbitrary arrest.

Article I, Section 9 of the Constitution says, "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Lincoln believed his order, later confirmed by Congress, was necessary to preserve the Union.

Milligan applied to a civilian court in Indiana for a writ of habeas corpus. He claimed his conviction was unconstitutional and asked for his right to a trial by jury in a civilian court. The issue came before the Supreme Court in 1866.

The Constitutional Issue

Milligan's guilt or innocence was not in question. The issue before the Court was clear. Could the government in wartime suspend citizens' constitutional rights and set up military courts in areas (1) which were free from invasion or rebellion and (2) in which the civilian courts were still operating?

The Decision

The Court answered this question with a strong "no." The Court ruled that suspending the right of habeas corpus and trying civilians in military courts when civilian courts still operated violated the Constitution.

In its opinion, the Court declared that the civilian courts had been open in Indiana and that the state was far removed from the battle zone. Thus, neither the President nor Congress could legally deny to an accused person a civilian trial by jury and due process of law, as guaranteed by the Constitution.

The Milligan decision represented a great victory for American civil liberties in times of war or internal turmoil. The

Court upheld the idea of civilian control over the military even in times of great stress and emergency. And it reaffirmed that the right of citizens to due process of law remains absolute as long as civilian courts are operating.

WORKSHEET: EX PARTE MILLIGAN (1866)

1. Why was Milligan arrested? ______________________________
____

2. Who arrested and tried Milligan? __________________________
____

3. What is a writ of habeas corpus? __________________________
____
____

4. In this case, what was Milligan's complaint? _____________
____

5. What does Article I, Section 9 of the Constitution have to do with Milligan's complaint?

   a. Milligan based his request for a trial by jury on this provision. TRUE FALSE

   b. The Secretary of War closed civilian courts under this provision. TRUE FALSE

   c. Lincoln based his order suspending habeas corpus on this provision. TRUE FALSE

6. Who won the case? ____________________________________

7. How was the Constitution used to support the decision in this case? (Clue: How did the Court interpret that part of Article I, Section 9, Clause 2 which says the writ of habeas corpus may be suspended when . . . public safety demands it?) ____
____

8. Which of the following are correct statements about the effects of this decision? Be prepared to explain your answers.

____ a. The writ of habeas corpus may not be suspended unless an emergency is great enough to close the civilian courts.

____ b. Congress and the President, acting together, may set up military tribunals in non-war areas even if the regular courts are open.

____ c. The principle of civilian control over the military was upheld.

LESSON PLAN AND NOTES FOR TEACHERS

V-7. Ex parte Milligan (1866)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case in the field of civil liberties. The Court ruled that neither President nor Congress had the authority to suspend the right of habeas corpus or replace civilian courts with military courts while civilian courts were still in operation.

Connection to Textbooks

This lesson could be used to supplement history textbook material on the Civil War and President Lincoln's decisions during that crisis. The lesson would compliment government text discussions of civil liberties, due process of law and the writ of habeas corpus.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. define the meaning of writ of habeas corpus;
3. identify the role of Article I, Section 9 of the Constitution in the case;
4. explain the constitutional basis of the Court's decision;
5. identify the significance of the decision for civil liberties.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a famous Civil War case that reaffirmed two essential principles of American civil liberties: (1) the right of civilians to due process of law free from military interference and (2) the idea of civilian control of the military.

Developing The Lesson

- Have students read the digest of the case.

- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the role of Article I, Section 9, Clause 2 of the Constitution in the case.

Concluding The Lesson

- Have students read the 5th Amendment (guaranteeing "due process of law") and the 7th Amendment (guaranteeing the right to a trial by jury). Ask how President Lincoln's order might have violated those Amendments. Ask why Lincoln issued such an order.
- Inform the class that one scholar (the historian Allan Nevins) has stated that, "The heart of this decision (Ex parte Milligan) is the heart of the difference between the United States of America and Nazi Germany or Communist Russia,"

  Ask students: What does this statement mean? How does the Court's decision in Ex parte Milligan relate to the difference between the United States and Russia? Do they agree or disagree with this statement? Why?

- You might want to inform students that the Court's decision in Ex parte Milligan still stands as precedent today. There have been no further efforts to suspend the writ of habeas corpus in the continental United States since Lincoln's order during the Civil War. However, after the attack on Pearl Harbor in 1941, President Franklin Delano Roosevelt put the Hawaiian Islands under martial law. He replaced all civil courts with military courts. In Duncan v. Kahanamoku (1946) the Supreme Court ruled FDR's action was unconstitutional.

Suggested Reading

Nevins, Allan. "The Case of the Copperhead Conspirator," in J. Garraty (ed.), Quarrels That Have Shaped the Constitution (New York: Harper Torchbooks, 1964), pp. 90-108.

V-8. MUNN V. ILLINOIS (1877)

Munn v. Illinois was the first of a famous group of cases usually called the "Granger cases." These cases resulted from the rapid growth of manufacturing and transportation companies after the Civil War (1860-1865).

Many of these companies, particularly the railroads and operators of huge grain warehouses, began to abuse the nearly complete control they had over the hauling and storage of farm products, especially grain. The railroads and grain warehouses charged farmers very high prices and often tried to cheat them. By the 1870's, things had become so bad that one newspaper, the Chicago Tribune, called the grain warehouses "blood sucking insects."

In response to such conditions, a large, politically powerful farm group, the Grange, developed. Farmers in the Granger Movement influenced state legislatures in the midwest to pass numerous laws subjecting railroads, warehouses and other public utilities to sharp regulation of prices charged for hauling freight and storing grain.

The railroads and grain warehousers fought the state regulation of their businesses in the courts. They claimed the so-called "granger laws" passed by state legislatures violated the Constitution in three ways: (1) they infringed on Congress' right to regulate interstate commerce, (2) they violated the Constitution's prohibition against interfering with contracts and (3) they violated the 14th Amendment by depriving businesses of their liberty and property without due process of law.

The Constitutional Issue

The Munn case posed a clear and important question for a nation with rapidly developing industries. Did the Constitution permit a state to regulate privately-owned businesses?

The Decision

The Court ruled 7 to 2 for the states. It said the Illinois state legislature could validly fix maximum rates for the storage of grain at Chicago and other places in the state. Chief Justice Morrison R. Waite wrote the majority opinion. Waite set forth a doctrine that both Congress and state legislatures use today to regulate many private business activities. This is the doctrine of "business affected with public interest."

Waite said that when business "has public consequence and affect(s) the community at large" it is a "business affected with a public interest." Under the Constitution the states can regulate such businesses and the owner of such a business "must submit to be controlled by the public for the common good."

The Court's decision established the power of government to regulate businesses other than public utilities. Today Congress and state legislatures exercise tremendous regulatory powers. In a single recent year, for example, the federal government alone issued 7,900 new regulations. The constitutional basis for much of this activity comes directly from the Court's decision in Munn v. Illinois.

WORKSHEET: MUNN V. ILLINOIS (1877)

1. How did the railroads and warehousers abuse their power in dealing with farmers? ____________________________________

   ____

2. What was the Grange? ________________________________

3. "Granger laws" were:

____ a. laws regulating the activities of the Grange

____ b. laws regulating the activities of railroads and warehousers

____ c. laws establishing the Grange

4. The railroads and warehousers claimed laws regulating their activities violated the Constitution because:

   a. ____

   b. ____

   c. ____

5. What was the Court's decision? ________________________

   ____

6. What is the doctrine of a "business affected with a public interest?" ____________________________________

   ____

   ____

7. Which of the following are correct statements about the effects of this decision on Americans? Be prepared to explain your answers.

____ a. The Grange was discredited.

____ b. The power of government to regulate private business was established.

____ c. The railroads continued to expand and dominate national transportation.

____ d. The precedent was set for today's extensive government regulation of economic activities.

LESSON PLAN AND NOTES FOR TEACHERS

V-8. Munn v. Illinois (1877)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case dealing with government regulation of business. The Court held a state could regulate private business and set the precedent for government regulation of business that prevails today.

Connection to Textbooks

The Munn case could be used in conjunction with history textbook chapters on the post Civil War expansion of business and commerce. The lesson could supplement government textbook discussions of government regulation of the economy and business.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. identify the role of the Grange and "Granger laws" in development of the case;
3. know the constitutional arguments in the case;
4. explain the place of the doctrine of "business affected with a public interest" in the decision;
5. identify the effect of the decision on government regulation of business.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case that established the power of government to regulate privately-owned businesses.

Developing The Lesson

- Have students read the digest of the Munn case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand the doctrine of "business affected with a public interest."

Concluding The Lesson

- Inform students that today government regulates a great many aspects of business and industry. In 1980, for example, the Federal Register (which includes all proposed and final regulations of the federal government) totaled 74,120 pages. Ask students if they think government regulation of business is necessary? Ask them to explain the significance of the Munn decision for such regulation.

Suggested Reading

Magrath, C. Peter, "The Case of the Unscrupulous Warehouseman," in J. Garraty (ed.) Quarrels That Have Shaped The Constitution (New York: Harper Torchbooks, 1964), pp. 109-128.

V-9. PLESSY V. FERGUSON (1896)

After the Civil War (1865), slavery was no longer legal. However, prejudices against blacks remained strong. Southern states began to pass "Jim Crow" laws to keep black people separated from whites. This landmark case arose as a deliberate test of one such law in Louisiana by a group of black leaders who formed a Citizens' Committee to test the constitutionality of the Separate Car Law.

Acting for the Citizens' Committee, Homer Plessy, a Louisiana resident who was one-eighth black, bought a first-class ticket on a train in Louisiana. Plessy took a seat in the coach reserved "for whites only," ignoring the car marked "for coloreds only." When Plessy refused to move to the coach reserved for "coloreds," he was arrested. He had violated the Louisiana law requiring separate railroad accommodations for blacks and whites.

The Citizens' Committee and Plessy claimed the Louisiana law denied him "equal protection of the law" as provided in the 14th Amendment. Plessy's lawyers also claimed the law violated the 13th Amendment ban on slavery by destroying the legal equality of the races and, in effect, reintroducing slavery.

The Constitutional Issue

Did a state law requiring segregation of the races violate the 13th Amendment ban on slavery or the 14th Amendment guarantee of equal protection of the laws for all citizens?

The Decision

By an 8 to 1 vote the Supreme Court ruled against Plessy. The Court held that the equal protection of the laws clause of the 14th Amendment allowed a state to provide "separate but equal" facilities for blacks. Justice Henry Brown wrote that the purpose of the 14th Amendment was "to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social . . . equality."

The Court also ruled the Louisiana law did not violate the 13th Amendment ban on slavery. Brown said a law "which implies merely a legal distinction between the white and colored races . . . has no tendency to . . . reestablish a state of involuntary servitude (slavery)."

The "separate but equal" doctrine established by the Court served as a justification for segregation in many states for the next half century. The *Plessy* decision reinforced state-ordered segregation, which had become part of daily life in the southern states. Blacks were required to use separate toilets, water fountains, streetcars and waiting rooms. They had to attend different schools and were kept separate from whites in prisons, hospitals, parks, theaters and other public facilities.

Legally, the "separate but equal" precedent set by the *Plessy* decision affected the Supreme Court rulings for the next 50 years. It limited the Court to deciding whether facilities provided for blacks were indeed equal, even though they might be separate. Not until 1954 did the Court deal directly with the more basic question -- was separating blacks from whites in itself unequal treatment?

One Justice, John M. Harlan, dissented in the *Plessy* decision. Harlan argued strongly against dividing people by race. He declared: "In the eye of the law there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. . ." Justice Harlan's view was finally to prevail in 1954, when the Supreme Court overruled the *Plessy* decision in the case of *Brown v. Board of Education of Topeka*.

WORKSHEET: PLESSY V. FERGUSON (1896)

1. What were "Jim Crow" laws? ______________________________

____

2. What law led to Homer Plessy's arrest? ____________________

____

3. Who was Plessy acting for when he refused to sit in the coach "for coloreds only?" ____________________

4. Which two Amendments did Plessy claim were violated by the Louisiana law?

_____ a. the 10th Amendment

_____ b. the 13th Amendment

_____ c. the 14th Amendment

_____ d. the 17th Amendment

5. Did the Court rule for Louisiana or Plessy? ______________

6. What rights were lost by blacks in this case? ____________

____

____

7. Which statements describe the effect of the "separate but equal doctrine" established by this case?

_____ a. Future Justices limited themselves to considering whether separate facilities for blacks were equal.

_____ b. States such as Louisiana were prevented from discriminating effectively against blacks.

_____ c. Congress was given separate but equal powers to enforce segregation laws.

_____ d. States such as Louisiana were encouraged to pass more laws separating blacks and whites in public facilities.

LESSON PLAN AND NOTES FOR TEACHERS

V-9. Plessy v. Ferguson (1896)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case dealing with civil rights. The Court upheld a Louisiana "Jim Crow" law requiring the segregation of races in public transportation. In so doing the Court established the principle of "separate but equal" which served as a precedent for segregation laws for the next 58 years, until the Court overruled the Plessy case in Brown v. Board of Education (1954).

Connection to Textbooks

This lesson could be used in conjunction with history textbook discussions of the establishment of racial segregation during the last part of the 19th century. The lesson could also be used with government textbook discussions of civil rights or the Supreme Court.

Objectives

Students are expected to:

1. know how the issue in the case arose;
2. explain the meaning of "Jim Crow" laws;
3. identify the relationship of the 13th and 14th Amendments to the case;
4. identify the effect of the "separate but equal" doctrine on racial discrimination and Supreme Court decision making.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case that established a precedent lasting nearly 60 years and greatly influencing race relations in America.

Developing The Lesson

- Have students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision, the constitutional basis of the decision and the constitutional significance of the decision.

Concluding The Issue

- Have students read the 14th Amendment. Point out that the 14th Amendment, adopted in 1868, seemed to guarantee equal rights for all citizens. However, during its early history this is not how the Amendment was interpreted by the Supreme Court. Ask the class to speculate about why the Court would interpret the 14th Amendment so narrowly that it could be used as a basis for promoting, rather than ending, racial segregation.
- After students have considered this question, inform them that one reason is that the Supreme Court, as other branches of our government, is not totally isolated from the social environment. In the *Plessy* decision the Court was reflecting the prevailing climate of opinion and trend of the times.

Suggested Reading

Woodward, C. Vann, "The Case of the Louisiana Traveler," in J. Garraty (ed.) *Quarrels That Have Shaped The Constitution* (New York: Harper Torchbooks, 1964), pp. 145-158.

V-10. NORTHERN SECURITIES COMPANY ET AL. V. U.S. (1904)

J. P. Morgan, James J. Hill and Edward H. Harriman were powerful investment bankers. All desperately wanted to control the three leading railroads that served America between the Great Lakes and the Pacific Northwest. They battled fiercely on the stock exchange in 1901 to gain control of the railroads. None of the three was able to win. So they shook hands and joined together in forming the Northern Securities Company to control the three railroads. They chartered their company under New Jersey laws.

In 1890, however, Congress had passed the Sherman Anti-Trust Act in an effort to stop the growth of such business monopolies. This law prohibited combinations "in restraint of trade or commerce among the several States . . . ." The Act fell within the power of Congress under the "commerce clause" which had been defined broadly in the Supreme Court case Gibbons v. Ogden. But the Act was vague. What did "restraint of trade and commerce" mean?

The government argued that the Northern Securities Company was guilty of the very thing the law forbad. It brought transportation throughout a huge section of the country under the control of one single company. The Northern Securities Company's main argument was that the federal government could not interfere with its affairs because it was merely a holding company created by a stock transaction. It was not dealing in commerce. Furthermore, the corporation was chartered legally under New Jersey laws. Interference with it by the federal government was a violation of state sovereignty as protected by the 10th Amendment.

The Constitutional Issue

The Supreme Court faced two issues in this case. First was a specific legal question. Was the combination of railroads as represented in the Northern Securities Company a "restraint on trade or commerce" covered by the Sherman Anti-Trust Act? Or was the combination just a stock transaction, not commerce? If the latter, it was legal under New Jersey law and protected by the 10th Amendment.

As often happens in Supreme Court cases, however, this specific question represented a larger, more general issue. Could the national government regulate the activities of the huge, powerful businesses that were developing in the nation? A decision in favor of the Northern Securities Company would greatly limit the effectiveness of the Sherman Anti-Trust Act and the ability of the government to gain some control over businesses.

The Decision

The Court ruled 5 to 4 in favor of the government and against the Northern Securities Company. The Court found that the purpose of the Company was to eliminate competition among the railroads involved. Hence, the Company was "a combination in restraint of interstate . . . commerce" and illegal under the Sherman Anti-Trust Act.

Thus, the Court interpreted the Act broadly. Justice John Harlan wrote that a combination of businesses, a trust, did not need to be engaged directly in commerce to violate the Act. If it restrained commerce in any way, it was illegal.

As to the argument that the Sherman Act violated state sovereignty, Harlan said a state law could not confer immunity from federal law. Congress in regulating interstate commerce was not subordinate to the states as they exercised their power to create corporations. If the national government was acting within its legitimate sphere, such as in regulating commerce, it was supreme.

The Court's decision helped open the way for increasing government control of trusts and monopolies. The decision was to become a symbol of the national government's constitutional right to control the activities of businesses. The Court's ruling gave President Theodore Roosevelt the leverage he needed to begin to exercise stricter control and supervision over the growing number of corporations in the country.

WORKSHEET: NORTHERN SECURITIES COMPANY ET AL. V. U.S. (1904)

1. In this case, what was the government's charge against the Northern Securities Corporation? ____________________

____

2. What did the Constitution have to do with the case? Select correct answers among the following statements. Be prepared to explain your answers.

____ a. Congress had the power to pass the Sherman Anti-Trust Act because of the commerce clause in the Constitution.

____ b. The Constitution forbids the regulation of stock transactions of any kind.

____ c. The Northern Securities Company argued it was not engaged in commerce of any kind and thus not subject to federal government regulation.

____ d. The Northern Securities Company argued that the government was violating the 10th Amendment guarantee of state sovereignty.

3. Did the decision in this case favor the Northern Securities Company or the United States Government? ________________

4. What did the winner gain from the decision in this case?

____

____

5. How did the Court clarify federal-state relations in this decision? (Clue: What happens when a national act conflicts with a state action?) ____________________

____

6. Which of the following are correct statements about the effects of this decision? Be prepared to explain your answers.

____ a. Railroads were given the go-ahead to expand.

____ b. Holding companies and other business combinations do not need to be directly in interstate commerce to be subject to federal regulation.

____ c. The federal government's right to control business was expanded greatly.

LESSON PLAN AND NOTES FOR TEACHERS

V-10. Northern Securities Company et al. v. U.S. (1904)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case on the power of government over businesses. In a 5 to 4 vote, the Court ruled a holding company created to eliminate competition between two railroad lines was a combination in restraint of trade and therefore in violation of the Sherman Anti-Trust Act.

Connection to Textbooks

This case, listed by scholars as one of the handful of cases which have altered the structure of our constitutional history, is often overlooked in textbooks. This lesson could be used in conjunction with discussions in history textbooks about the development of government regulation of business. The lesson would supplement similar material in government textbooks, as well as discussions about the Supreme Court.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. identify the place of the Sherman Anti-Trust Act in the case;
3. identify rights won and lost by contending parties;
4. explain the effects of the decision on the development of government regulation of business.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students that they are to analyze a Supreme Court case that involved the power of government to prevent monopolies and regulate business.
- Remind the class that a monopoly is a business condition marked by the absence of competition and the artificial fixing of prices for services or commodities. Monopolies may result when businesses create conditions in which

prices are controlled through such devices as mergers, holding companies and conspiracies to restrain trade.

Developing The Lesson

- Have students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand the key role of the Sherman Anti-Trust Act in the case.

Concluding The Lesson

- You might want to inform the class that although passed in 1890 the Sherman Anti-Trust Act was largely a "dead letter" until the Northern Securities decision. This decision revitalized the Sherman Law, because it broadened the definition of commerce and therefore increased the type and number of business practices that could be prosecuted under the law. After the Northern Securities case, the government started more than forty prosecutions under the Sherman Law during the remainder of Theodore Roosevelt's term as President.

V-11. MULLER V. OREGON (1908)

At the start of the 1900's state legislatures began passing laws aimed at reforming working conditions. The new laws were soon challenged. As a result, the Supreme Court began to face the question of whether these reform laws were constitutional.

A case that dramatically changed how the Supreme Court would make decisions about such social legislation arose in 1907. In that year, Curt Muller, a Portland, Oregon laundry owner was arrested for violating an Oregon law setting a maximum 10 hour work day for women working in laundries. Muller challenged the law as a violation of his "liberty to contract" as guaranteed by the 14th Amendment.

Muller's argument was that the "due process" clause of the 14th Amendment prevented the state from interfering with his liberty to enter into whatever contracts were necessary to run a business, including setting wages and hours for workers. This interpretation of the 14th Amendment had been supported by the Supreme Court in several earlier cases.

Louis D. Brandeis, a brilliant lawyer later to become a famous Supreme Court Justice, argued the case for Oregon. Brandeis took a startling new approach. He presented sociological, medical and statistical information to show that long hours of hard labor had a harmful effect upon women's health. He claimed the Court must consider whether the Oregon law was a reasonable attempt to protect public health and safety. A state law might be allowed to interfere with the 14th Amendment guarantee of liberty of contract if it could be justified as protecting public health against real dangers.

But how could the Court decide when a state law met such a standard? Brandeis argued the Court could not rely only on legal precedents and the vague words of the Constitution in such cases. It also had to consider relevant facts about social conditions that led to the law.

The Constitutional Issue

Brandeis defined the question before the Court. Did the facts of the situation justify the Oregon law's interference with the 14th Amendment guarantee of liberty of contract?

Would the Court accept Brandeis' novel argument that it should consider relevant social facts in deciding the case? Or would the Court, as in the past, decide the case strictly in terms of legal arguments?

The Decision

The Court accepted Brandeis' argument. It ruled unanimously to uphold Oregon's law. The factual evidence Brandeis supplied was convincing. The Court said in its opinion that longer working hours might harm women's ability to bear children. Thus, the state's limitation of those hours was a justified interference with liberty of contract and properly within the state's police power.

The Muller case established that lawyers might use social facts and statistics as well as strictly legal arguments in the briefs they presented to the Supreme Court. A brief is a document given to a court presenting a lawyer's argument in a case.

Today a brief that contains substantial non-legal data is called a Brandeis brief. Ever since the Muller case, lawyers have used relevant social data in their arguments before the Court, when the case has warranted it. The Supreme Court also has recognized that information about social conditions may sometimes be a useful addition to legal principles when deciding cases.

WORKSHEET: MULLER V. OREGON (1908)

1. Why was Carl Muller arrested? ____________________________

____

2. Muller claimed the 14th Amendment protected his right to:

____ a. hire only white, male workers.

____ b. make whatever contracts about working hours he wanted.

____ c. vote in national elections like any other citizen.

3. What was new about Louis D. Brandeis' argument in behalf of Oregon? ____________________________

____

____

4. Did Brandeis argue that the Court should ignore the Constitution in deciding the case? YES NO

Explain your answer. ____________________________

____

____

5. Who won the case? ____________________________

6. What is a Brandeis brief? ____________________________

____

7. Which of the follow are correct statements about the effects of this decision on Americans. Be prepared to defend your answer.

____ a. Social problems may be dealt with by special legislation.

____ b. Individual rights may be destroyed for the benefit of the many.

____ c. Sociological and scientific data, not just the law, may be considered in determining the meaning of the Constitution.

____ d. A class of people may receive special attention from the law.

LESSON PLAN AND NOTES FOR TEACHERS

V-11. Muller v. Oregon (1908)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case, which established the place and use of social and scientific information in the Court's decisions. The Court upheld as constitutional an Oregon law regulating working hours for women. In so doing, it took into consideration information about the effects of long hours on women's health supplied by Louis Brandeis, the attorney for the state of Oregon. Brandeis became eventually one of the most distinguished Justices of the Supreme Court.

Connection to Textbooks

This lesson could supplement government textbook discussions of the process of Supreme Court decision making. The Muller case established the role of nonlegal data in formal arguments presented to the Court. In chapters about the Progressive Era, history textbooks mention various efforts to enact social legislation, including Muller v. Oregon. This case may be used to illustrate the questions involved in such legislation.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. identify the place of the 14th Amendment in the case;
3. explain why Louis Brandeis' argument for Oregon was a new approach to presenting a brief to the Court;
4. explain the effect of this case and the "Brandeis brief" on how the Court makes decisions.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are going to analyze a case that established the role of nonlegal evidence in Supreme Court decision making.

- Explain to students that before this case the legal profession had developed no techniques whereby the Supreme Court could be given social data and information relevant to a case. As a result, cases were argued before the Court strictly in terms of legal principles and precedents (the rulings of earlier courts in similar type cases).

Developing The Lesson

- Have students read the digest of the Muller v. Oregon case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision, the constitutional basis of the decision and the constitutional significance of the decision.

Concluding The Lesson

- Tell students that Brandeis' brief contained only two pages on the legal principles involved in the case and over a hundred on the medical effects of working long hours on women. Ask the class why the Brandeis brief was considered so different.
- Tell students that one newspaper writer of the time called the Muller case "unquestionably one of the momentous decisions of the Supreme Court." Ask the students to give reasons why the writer would make such a claim.

V-12. SCHENCK V. UNITED STATES (1919)

During World War I, Congress passed the Espionage Act of 1917. This law made it illegal to encourage insubordination in the armed forces or to use the mails to distribute materials urging resistance to the government.

Charles Schenck, general secretary of the Socialist party in the United States, was an outspoken critic of America's role in the war. Schenck printed and mailed about 15,000 leaflets to men eligible to be drafted. The leaflets urged the men to resist the draft and condemned American participation in the war.

Schenck was arrested and convicted of violating the Espionage Act of 1917. At his trial, Schenck claimed his First Amendment right to free speech was violated. The First Amendment states: "Congress shall make no law . . . abridging the freedom of speech, or of the press."

The Constitutional Issue

The specific question facing the Court was clear. Did the Espionage Act of 1917, under which Schenck was arrested, violate the First Amendment protection against free speech?

The Schenck case also posed a larger question about the boundaries of free speech. For the first time in its history, the Supreme Court was faced directly with the question of whether there were times when the government might limit speech.

The Decision

The Court decided against Schenck by a unanimous vote. Thus, the Court ruled the Espionage Act of 1917 did not violate the First Amendment rights of free speech and free press.

Justice Oliver Wendell Holmes wrote the Court's opinion. He set forth a "test" for when government might limit free speech. Holmes said that when spoken or written words "create a clear and present danger" of bringing about evils, which Congress had the authority to prevent, the government may limit speech.

Holmes reasoned that during peacetime Schenck's ideas would have been protected by the First Amendment. During a wartime emergency, however, urging men to resist the draft presented a "clear and present danger" to the nation. Holmes declared: "When a nation is at war, many things that might be said in time of peace are such a hindrance to its efforts that their utterance will not be . . . protected by any constitutional right."

The Schenck decision was important for several reasons. First, it established the "clear and present danger" doctrine. This formula has been used in many free speech cases since that time. In addition, the decision made clear that certain speech may be permissible in peacetime but not in wartime. Thus, the Schenck case established that the First Amendment protection of free speech is not an absolute guarantee. There are conditions, such as those Holmes described, when speech may be constrained.

WORKSHEET: SCHENCK V. UNITED STATES (1919)

1. The Espionage Act of 1917 prohibited Americans from traveling abroad. TRUE FALSE

2. Why was Charles Schenck arrested? ______________________________
____

3. Schenck argued he was protected by the ________ Amendment.

4. What was the Court's decision? ______________________________
____

5. What was the "clear and present danger" rule? ______________
____
____

6. Would Schenck's speech have been permitted during peacetime? __________ Explain. ______________________________
____

7. Which of the following are correct statements about the effects of this decision on Americans. Be prepared to explain your answers.

____ a. Some limits were put on the right of free speech.

____ b. The right of free speech was protected against all limits.

____ c. The Court developed a formula for deciding future free speech cases.

____ d. The Court established clearly that there was no difference in speech during times of peace or war.

LESSON PLAN AND NOTES FOR TEACHERS

V-12. Schenck v. United States (1919)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case on the right of free speech. The Court ruled unanimously that speech may be limited when it presents a "clear and present danger" of inciting evils Congress has the constitutional authority to prevent.

Connection to Textbooks

This lesson could be used in connection with government textbook discussions of civil liberties and with history textbook chapters on the World War I period.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. explain the role of the First Amendment in this case;
3. identify the rights won and lost by contending parties;
4. understand the meaning of the "clear and present danger" rule;
5. explain the significance of this decision for the right of free speech.

Suggestions For Teaching The Lesson

Opening The Lesson

- Write this quote from Justice Felix Frankfurter on the board: "Freedom of expression is the well-spring of our civilization." Ask students what Frankfurter means. After some discussion sum up by reminding students that freedom and democracy are not possible without the freedom to express ideas.
- Tell students that they are to analyze a Supreme Court case growing out of World War I that presented the Supreme Court with its first opportunity to deal with these questions. Is the right of free speech absolute or can

the government place limits on speech? If the government can limit speech, under what circumstances can it do so?

Developing the Lesson

- Have students read the digest of the Schenck case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand the "clear and present danger" rule developed by Justice Holmes.

Concluding The Lesson

- Discuss the "clear and present danger" rule with students. Tell students that in formulating the rule Justice Holmes coined one of the most famous examples in Supreme Court history. Holmes wrote that the First Amendment would, "not protect a man . . . (who) falsely shout(ed) fire in a theater and caused a panic." Holmes then said:

  > The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

- In a famous dissent in a subsequent case (Abrams v. United States, 1919) Holmes further elaborated his position on free speech. He argued that before restricting free speech one should always determine whether doing so will serve the public interest, or deprive the public of information which, in a democracy, it has every right to have, if it is to deal effectively with public issues. Holmes, explained, "the best test of truth is the power of the thought to get itself accepted in the competition of the market."
- Conclude by pointing out to students that Holmes' "clear and present danger" rule was one attempt by the Court to establish a test to balance the right of an individual to speak freely and the society's right to protection. Inform students that in the years following the Schenck case the Supreme Court has developed additional tests to determine the permissable bounds of free speech. For

example, the "bad tendency" rule holds that speech may be limited if there is even a possibility it might lead to some evil. The "bad tendency" rule gives more weight to protecting society's interests than to the individual. The "clear and present danger" rule gives greater weight to protecting the individual's rights.

Suggested Reading

Murphy, Paul. World War I and the Origin of Civil Liberties in the United States (New York: Norton Press, 1979).

This book contains numerous colorful examples of the suppression of free expression during World War I. See pp. 128-132.

V-13. SCHECHTER POULTRY CORP. V. UNITED STATES (1935)

During the early 1930's President FDR fought the Great Depression by proposing many economic recovery programs. The centerpiece of FDR's efforts was the National Industrial Recovery Act (NRA) of 1933.

Under the law, Congress gave the President authority to approve codes of fair competition for different industries. These codes were drawn up by trade and industry groups themselves. Each of the codes included standards for minimum wages and hours. When the President approved the code for an industry, it had the force of law.

By 1935 many industries had started to ignore NRA because it appeared the Supreme Court saw the law as unconstitutional. The government decided to bring a test case before the Supreme Court. A high Court ruling in favor of NRA codes would encourage industries to accept the codes.

Thus it happened that four brothers running a poultry business became a key test of FDR's economic recovery program. The Schechters bought live poultry from many points out of state and sold it in New York City. The four brothers were convicted by the government of violating several provisions of the NRA live poultry code in order to keep their prices below those of their competitors. They were also charged with selling thousands of pounds of diseased chickens to a local butcher. The Schechters appealed to the Supreme Court. The press called the suit the "Sick Chicken Case."

The Constitutional Issue

The case involved three questions: (1) was the NRA justified because of the economic crisis facing the nation?, (2) did the Constitution allow Congress to delegate so much power to the President? and (3) did the law come under Congress' power to regulate interstate commerce?

The Decision

The NRA lost on all counts. In a unanimous decision the Supreme Court ruled first that the NRA was not justified by the economic problems of the nation. Chief Justice Hughes wrote "extraordinary conditions do not create or enlarge constitutional power."

Second, the Court said that under the Constitution only Congress has power to make laws. If Congress wanted to delegate any of this power to the President, it must set clear standards to guide the executive branch in making detailed applications of the general law. The NRA was unconstitutional because, in effect, it gave trade and industry groups blanket power to enact into law whatever provisions they wanted.

Finally, the Court said that although the Schechters bought their poultry from many states they processed and sold it only in New York. Thus, the Schechters' operation was a local concern not directly affecting interstate commerce and so beyond federal control.

The decision was at first seen as devastating to FDR's New Deal economic recovery program. But by 1937 the Supreme Court began upholding new laws passed to replace many New Deal measures. The NRA was replaced by the National Labor Relations Act of 1935 which the Court upheld in 1937.

The Schechter case did establish the principle that in domestic affairs Congress may not delegate broad legislative powers to the President without clear standards to guide the President. This principle stands today.

WORKSHEET: SCHECHTER POULTRY CORP. V. UNITED STATES (1935)

1. What was the purpose of the National Industrial Recovery Act? ______________________________

____

2. In Schechter v. United States, what was the government's complaint against the Schechter brothers? ____________

____

3. How was the Constitution involved in this case? Select correct answers. Be prepared to explain your answers.

____ a. Congress based its right to pass the National Industrial Recovery Act on the commerce clause.

____ b. The Tenth Amendment gave New York the right to regulate intrastate commerce.

____ c. Congress is given the lawmaking power by the Constitution. In this case, it delegated some of the power to the President.

4. Did the decision in this case favor the Schechter brothers or the United States Government? ____________________

5. What rights were gained by the winners in this case? _____

____

LESSON PLAN AND NOTES FOR TEACHERS

V-13. Schechter Poultry Corp. V. United States (1935)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case in which the Court held key provisions of the National Industrial Recovery Act (NRA) of 1933 unconstitutional. The Court ruled that the NRA was an excessive delegation of power from Congress to the President.

Connection to Textbooks

The Schechter case was a major defeat for President Franklin Delano Roosevelt's New Deal program. The lesson could be used to supplement government text material on the powers of the Presidency, separation of powers and/or Congress' commerce power. The lesson supplements history text discussions of FDR's New Deal and struggle with the Supreme Court.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. explain the connection of this case to the principle of separation of powers and the commerce clause;
3. identify the Court's ruling on the three major questions in the case;
4. identify the significance of the case for Congressional-Presidential relations.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case that was part of what has been called "Black Monday." On Monday, May 27, 1935 the Supreme Court handed President Franklin Delano Roosevelt three major defeats, the most important of which was the Court's decision in the "Sick Chicken" case.

Developing The Lesson

- Have students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- After students complete the worksheet conduct a discussion about it.

- Be certain students comprehend the issue, the decision, the constitutional basis of the decision and the constitutional significance of the decision.

Concluding The Lesson

- Inform students that after the Schechter decision FDR told reporters, "The implications of this decision are much more important than any decision probably since the Dred Scott case." Point out that FDR's major concern was for the Court's narrow interpretation of the commerce power. "The big issue is this," Roosevelt said: "Does this decision mean that the United States Government has no control over any national economic problem?" Conclude by explaining that as it turned out the decision was only a temporary setback for the expansion of the federal government's power over commerce as through the years the Court has continued to expand the government's powers in this area.

Suggested Reading

Friedal, Frank, "The Sick Chicken Case," in J. Garraty (ed.) Quarrels That Have Shaped the Constitution (New York: Harper Torchbooks, 1964), pp. 191-209.

V-14. UNITED STATES V. CURTISS-WRIGHT EXPORT CORP. (1936)

In 1934, Bolivia and Paraguay were at war. Both countries needed military weapons from abroad. American weapons makers were eager to sell to them because of the Great Depression at home. At the same time the American public and Great Britain wanted the United States to help end the war by stopping all arms sales.

On May 28, 1934 Congress passed a joint resolution giving President Franklin Delano Roosevelt authority to place an embargo on selling weapons to Bolivia and Paraguay. The President was to do this if he believed such an embargo would help restore the peace. Four days later FDR declared the embargo in effect. Before long the federal government indicted the Curtiss-Wright Corporation for violating the embargo by selling weapons to Bolivia. Curtiss-Wright claimed the Constitution did not allow Congress to give the President power to declare an embargo.

The Constitutional Issue

Was Congress' joint resolution an unconstitutional delegation of legislative power to the executive branch? Did Congress have authority to delegate broad discretionary powers to the President in foreign affairs?

The Decision

The Supreme Court ruled 7 to 1 to uphold the President's embargo. The Court distinguished between the powers exercised by Congress and the President in "external" (foreign) affairs and "internal" (domestic) affairs. The Court said that the national government could undertake action in foreign affairs that might not be valid in domestic affairs.

Writing for the majority Justice George Sutherland reasoned that since the United States had existed as a sovereign nation before the adoption of the Constitution it had powers in international affairs which were neither implied nor listed in the Constitution. These powers came from the very fact that the United States existed in a world of nations and must have powers to meet its international responsibilities like other sovereign nations. This idea is called the doctrine of inherent powers.

Further, the Court ruled that in foreign affairs Congress could delegate broad discretionary powers to the President. This was in contrast to domestic affairs where Congress could only delegate legislative powers to the President if it also set clear guidelines for using those powers.

The Curtiss-Wright decision recognized the full responsibility of the national government for foreign affairs. In so doing it gave the President the key role and great freedom in directing the nation's foreign affairs. Justice Sutherland wrote: "[T]he

President alone has the power to speak as a representative of the nation." He described the President's power in foreign affairs as "plenary [complete] and exclusive." The President is "the sole organ of the federal government in ... international relations."

WORKSHEET: UNITED STATES V. CURTISS-WRIGHT CORP. (1936)

1. What events caused Congress to pass a joint resolution regarding arms sales? ____________________

   ____

   ____

2. What power did the joint resolution delegate to the President? ____________________

   ____

3. Under the Constitution, which branch of the national government is to make the laws? ____________________

4. Which statement best describes the key constitutional issue raised in the case:

____ a. Could the legislative branch legally transfer power given to it by the Constitution to the executive branch?

____ b. Could the Supreme Court rule on the constitutionality of issues in foreign affairs?

____ c. Did the President have constitutional authority to negotiate treaties with foreign nations?

5. What was the Court's decision? ____________________

   ____

6. What is the doctrine of inherent powers? ____________________

   ____

   ____

   ____

7. Which of the following are correct statements about the effects of this decision? Be prepared to explain your answer.

____ a. The growth of Presidential power was halted.

____ b. Congress could delegate whatever authority it wanted to the President in foreign affairs.

____ c. The power of the modern Presidency was increased.

LESSON PLAN AND NOTES FOR TEACHERS

V-14. United States V. Curtiss-Wright Corp. (1936)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case dealing with the powers of the President in foreign affairs. The Court upheld a Congressional resolution authorizing the President, at his discretion, to embargo arms shipments to belligerents in a South American war.

Connection to the Textbooks

This lesson could be used to supplement government textbook discussions of Constitutional powers (enumerated, implied, inherent), the principle of separation of powers and Presidential-Congressional relations or the powers of the Presidency. History text discussions of the Roosevelt presidency and the onset of World War II could be enriched with this lesson (see "Concluding the Lesson" below).

Objectives

Students are expected to:

1. know how the issue in this case arose:
2. identify the delegation of authority from Congress to the President as the key issue in the case;
3. explain the place of the doctrine of "inherent powers" in the decision;
4. identify the effect of the decision on the power of the President in foreign affairs.

Suggestions For Teaching The Lesson

Opening The Lesson

- Briefly review the concept of separation of powers by asking students what it means.
- Inform students that they are to analyze a Supreme Court case involving a question related to the principle of separation of powers. Explain that the case involved the powers of the Congress and President in foreign affairs and arose in the mid-1930's as the world was heading toward the start of World War II.

- You may wish to review the term "embargo" with students. An embargo is an order of government putting restrictions on commerce.

Developing The Lesson

- Have students read the digest of the Curtiss-Wright case.
- Ask the students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain the students understand the doctrine of "inherent powers."

Concluding The Lesson

- You might want to inform students that this decision had important consequences for President Franklin Delano Roosevelt's conduct of American foreign policy at the start of World War II. The decision opened the way for Congress to give FDR wide latitude in conducting diplomacy and aiding soon-to-become American allies in resisting Hitler's onslaught. For example, in 1941 Congress passed the Lend-Lease Act. This law gave FDR great discretion to distribute huge sums of money to nations fighting against the Axis powers. Thus, after the German invasion of Russia, FDR used the law to send vital war material to the Russian front without the delay of consulting Congress. This material played an important role in helping the Russians withstand the German attack.

Suggested Reading

Divine, Robert A., "The Case of the Smuggled Bombers," in J. Garraty (ed.) Quarrels That Have Shaped The Constitution (New York: Harper Torchbooks, 1964), pp. 210-221.

V-15. BROWN V. BOARD OF EDUCATION OF TOPEKA (1954)

The 14th Amendment declares: "No state shall... deny to any person within its jurisdiction the equal protection of the laws." In 1896 the Supreme Court handed down a landmark decision on the meaning of this "equal protection" clause. In Plessy v. Ferguson the Court ruled that the 14th Amendment allowed a state to segregate whites and blacks by providing "separate but equal" facilities for blacks.

For nearly sixty years this doctrine of "separate but equal" served as a constitutional justification for segregation as a way of life in the United States. Under this doctrine blacks were separated from whites in schools, housing, transportation and recreation.

During the 1930's, however, blacks had begun fighting to desegregate public schools--especially colleges and universities in the South. The National Association for the Advancement of Colored People (NAACP) became a leader in this struggle. By the early 1950's the NAACP was ready to wage all out war in the courts on segregated elementary and high schools. The NAACP started lawsuits challenging segregation in five different school systems around the country. In each case the parents of black school children asked lower courts to strike down laws requiring or permitting segregated schools. Eventually these cases were heard together by the Supreme Court as a major challenge to the "separate but equal" doctrine.

The case that gave this challenge its name--Brown v. Board of Education of Topeka--involved a family in Topeka, Kansas. Mr. and Mrs. Oliver Brown sued the Topeka school board because their daughter Linda was forced to walk 20 blocks to an all black grade school instead of going to an all-white school in her own neighborhood.

Thurgood Marshall, later to become a Supreme Court Justice, represented the NAACP. Marshall presented evidence to show that separating black and white students was harmful to blacks. He argued that segregated schools were not and could never be equal. Such schools violated the "equal protection" guarantee of the 14th Amendment.

On the other side, John W. Davis, a distinguished attorney and candidate for President in 1924, argued that the framers of the 14th Amendment never intended it to prevent segregation in the nation's schools. Further, he claimed that the courts did not have the power to tell the states how to desegregate their schools.

The Constitutional Issue

In all five cases before the Supreme Court, the lower courts had found that the separate black schools had equal or soon to be equal facilities as white schools. Thus, the constitutional issue was clearly focused on the "separate but equal doctrine" itself. Did state supported segregation in public schools--even when black and white schools had equal facilities--violate the equal protection clause of the 14th Amendment?

The Decision

On May 17, 1954 the Supreme Court unanimously struck down the "separate but equal" doctrine as an unconstitutional violation of the 14th Amendment. The opinion was written by Chief Justice Earl Warren.

Warren said it was clear that segregation gave black children "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone." Even if segregated schools give blacks equal physical facilities, Warren argued, they deprived students of equal educational opportunities. Thus, Warren declared:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.

The Brown decision destroyed the constitutional foundation of all forms of state supported segregation in the United States. At the same time it prompted massive resistance to school integration throughout many states. Resistance in turn helped spur the growth of a civil rights movement. This movement would eventually lead to the passage by Congress of a series of civil rights laws in 1957, 1960, 1964, 1965 and 1968. These laws increased black political and civil rights.

Resistance also slowed implementation of the Brown decision in schools and led to many additional court cases. The first one, known as Brown II, came in 1955 when the Supreme Court ordered school districts to begin desegregation "with all deliberate speed." In reality just the opposite often happened. Fifteen years after Brown only 20 percent of black students in the south attended integrated schools. Faced with continued resistance the Supreme Court ruled in 1969 that segregation must end "at once." Eventually lower federal court rulings and the work of the federal government began to change this pattern. By 1978 40 percent of black and other minority children were attending integrated schools in the United States.

WORKSHEET: BROWN V. BOARD OF EDUCATION OF TOPEKA (1954)

1. What doctrine was established in 1896 by Plessy v. Ferguson? ______________________________

2. What did the "equal protection" clause of the 14th Amendment have to do with the complaint in this case? Select correct answers among the following statements. Be prepared to explain your answers.

____ a. Blacks claimed the "equal protection" clause prohibited segregated schools.

____ b. The NAACP argued the "equal protection" clause was guaranteed by the Plessy v. Ferguson case.

____ c. In the Brown decision the Court overturned the meaning given the "equal protection" clause in the case of Plessy v. Ferguson.

3. Which side won the decision? ____________________

4. What rights were won by blacks in this case? ____________
____
____

5. Which of the following are correct statements about the effects of this decision on America?

____ a. It ended segregation in the schools immediately.

____ b. It led to the passage of several civil rights laws.

____ c. It gave blacks a constitutional tool to continue to fight segregation.

6. One historian said: "The Court's decision in Brown v. Board remains one of the great landmarks in the history of American liberty." Why could the historian make such a claim? Do you agree or disagree? Explain.

LESSON PLAN AND NOTES FOR TEACHERS

V-15. Brown v. Board of Education of Topeka (1954)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case in which the Court declared separate public schools for blacks and whites to be inherently unequal. Thus, state supported segregation in public schools violated the equal protection clause of the 14th Amendment. The decision overturned the "separate but equal doctrine" established in Plessy v. Ferguson (1896).

Connection to Textbooks

The *Brown* case represents a watershed in American race relations. The lesson could be used with government textbook materials on the Supreme Court, civil rights, or national-state relations. It could supplement history textbook discussions of the civil rights movement or the Warren Court.

Objectives

Students are expected to:

1. explain the connection of the doctrine of "separate but equal" to the case;
2. know how the issue in this case arose;
3. explain the connection of the 14th Amendment "equal protection" clause to this case;
4. identify the constitutional issue settled by this case;
5. explain the impact of this case on school desegregation and the civil rights of black people.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students that they are to analyze one of the best known and most important cases in the modern history of the Supreme Court.

Developing The Lesson

- Have students read the *Brown* case.

Content Note: As the Lesson indicates, the *Brown* case actually involved five separate cases brought by the NAACP on school segregation. These were: (1) Brown v. Board of Education of Topeka, (2) Briggs v. Elliott, (3) Davis v. County School Board of Prince Edward County, Va., (4) Gebhart v. Belton and (5) Bolling v. Sharp. The Court actually decided cases (1), (2), (3) and (4) together under the name of Brown. Bolling v. Sharp concerned the District of Columbia public schools and the 5th Amendment guarantee of due process of law since the 14th Amendment guarantee of equal protection applied only to states. The Court issued a separate decision in Bolling v. Sharp (1954) ruling that segregation in the District of Columbia violated the 5th Amendment guarantee of due process of law.

- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the key role of the "separate but equal" doctrine in this case and the constitutional basis and significance of the case.

Concluding The Lesson

- Remind students that the Brown decision is considered a landmark in the development of American civil liberties. Point out that the decision truly helped to initiate a social revolution in America. At the same time remind students that the case is a good illustration of how the Court must depend upon others to actually carry out its decisions. As a result many delays occurred in implementing the decision. Milton Cummings, Jr., a political scientist, and David Wise point out one of the most ironic:

> And in Topeka, Kansas, where it had all begun, a federal judge in 1979 reopened the Brown case after a group of parents complained that, twenty five years later, the city's schools were still segregated. 'The wheel had turned all the way around.' Charles Scott, Jr., attorney for the parents said, 'and nothing has changed.' Among the group of parents who filed the complaint was Linda Carol Brown, now the mother of two children in the Topeka public school system.*

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*Milton C. Cummings, Jr. and David Wise, Democracy Under Pressure, 4th Ed. (New York: Harcourt Brace Jovanovich, Inc., 1981), p. 157.

Suggested Reading

Kelly, Alfred H. "The School Desegregation Case" in J. Garraty (ed.) Quarrels That Have Shaped the Constitution (New York: Harper Torchbooks, 1974), pp. 243-268.

Kluger, Richard, Simple Justice; The History of Brown v. Board of Education and Black America's Struggle for Equality (New York: Alfred A. Knopf, 1976).

V-16. GIDEON V. WAINRIGHT (1963)

Clarence Earl Gideon, a penniless Florida drifter, was arrested for the burglary of a Florida pool hall. Gideon asked the Florida state court, where he was tried, for a court-appointed attorney, since he could not afford a lawyer. The Court denied Gideon's request, and he conducted his own defense.

Gideon was convicted and sentenced to five years in prison. In his jail cell, using a pencil and pad of paper, Gideon composed a petition asking the Supreme Court to review his case.

"The question is very simple," wrote Gideon. "I requested the (Florida) court to appoint me an attorney and the court refused." He maintained that the state court's refusal to appoint counsel for him denied him rights "quaranteed by the Constitution and the Bill of Rights" as covered in the 6th and 14th Amendments. The Supreme Court decided to accept Gideon's case for review.

The Constitutional Issue

The 6th Amendment states that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

Despite this clear language, the Supreme Court in earlier cases had ruled that in state courts needy defendants had a constitutional right to a court-appointed lawyer in only two situations: (1) in cases involving the death penalty (Powell v. Alabama, 1932) and (2) where special circumstances, such as youth or mental incompetence, required furnishing an attorney to assure a fair trial (Betts v. Brady, 1942).

Should the 6th Amendment right to counsel be applied to all criminal cases? Or should the Court continue to follow the precedent set in Betts v. Brady? In arguing the Gideon case, the Supreme Court asked the attorneys specifically to consider the question: should Betts v. Brady be overruled?

The Decision

The Court ruled unanimously in Gideon's favor and to overrule Betts v. Brady. Thus, the Court held that the right to counsel was so fundamental that the 14th Amendment "due process" clause extended the 6th Amendment guarantee of counsel to state defendants in all criminal cases. This ruling was a major step in applying the Bill of Rights to the states.

Clarence Earl Gideon was granted a new trial in Florida in August of 1963. Represented by a court-appointed lawyer, Gideon was found innocent. In addition, the Supreme Court's decision caused a review of numerous cases, not only in Florida, but in all other states. In cases where defendants had been tried without the benefits of counsel, retrials were scheduled. Many were found innocent and released from prisons.

The Gideon case marked the beginning of a nationwide concern with equal justice for the poor. It recognized that, left without the aid of counsel, even intelligent and educated persons have very little chance of defending themselves in criminal trials.

WORKSHEET: GIDEON V. WAINWRIGHT (1963)

1. Why was Clarence Gideon arrested and brought to trial?

   ____

2. What constitutional right did Gideon claim was violated by the Florida court? ______________________

   ____

3. Before the Gideon decision, in which of the following situations did the Supreme Court say a person was entitled to a court-appointed lawyer in a state trial?

   ____ a. When the case involved the death penalty.

   ____ b. When the defendant was accused of more than one crime.

   ____ c. When the case involved a major felony.

   ____ d. When special circumstances such as mental incompetence were involved.

4. Who won the case, the state of Florida or Gideon? ________

5. What part did the 14th Amendment play in the Court's decision? ______________________________

   ____

6. Why did the Court extend the 6th Amendment right to counsel to all state criminal cases? ____________________

   ____

   ____

7. How did the Gideon decision affect other prisoners around the country?

   ____

   ____

   ____

LESSON PLAN AND NOTES FOR TEACHERS

V-16. Gideon v. Wainwright (1963)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court decision on criminal rights. The lesson focuses on the Court's interpretation of the 6th Amendment's guarantee of the right to counsel. The circumstances, decision and impact of the famous Gideon case are presented.

Connection to Textbooks

The Gideon case is a landmark in the development of the rights of those accused of crime and in the establishment of equal justice for the poor. It compliments government textbook discussions of the Bill of Rights, the criminal justice system or the nationalization of the Bill of Rights through the 14th Amendment. It can be used to supplement American history textbook treatments of the "Warren Court."

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. explain the 6th Amendment issue in the case;
3. identify the role of two precedents -- Powell v. Alabama and Betts v. Brady in the issue;
4. explain the impact of the decision on criminal procedure.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case that affected thousands of prisoners around the nation and set a criterion for a fair trial still followed today.

Developing The Lesson

- Have students read the digest of the Gideon case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- Be certain that students comprehend the issue, the decision and the role of the 14th Amendment in the decision. *Note*: You might remind students that the Bill of Rights originally applied *only* to the national government. Most of the provisions of the Bill of Rights have come to apply to state and local governments because of cases such as the *Gideon* case.

Concluding the Lesson

- Inform students that former Attorney General, Robert F. Kennedy, once said of the Gideon case:

> If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell with a pencil and paper to write a letter to the Supreme Court, and if the Court had not taken the trouble to look for merit in that one crude petition among all the bundles of mail it must receive every day, the vast machinery of American law would have gone on undistrubed. But Gideon *did* write that letter, the Court *did* look into his case. . . and the whole course of American legal history has been changed.

Ask students:

1. Did Kennedy support or oppose the *Gideon* decision?
2. Why would Kennedy say the decision changed the "whole course of American legal history?"
3. How did the decision support the American ideal of equal justice for all?

Suggested Reading

Lewis, Anthony. *Gideon's Trumpet* (New York: Random House, 1964).

This is clearly written, interesting account of the *Gideon* case.

Suggested Films

JUSTICE UNDER LAW: THE GIDEON CASE

In the Gideon case, the defendant was tried and convicted without legal counsel. The film shows how Gideon, in prison, communicated with state and federal legislative bodies to obtain legal representation, and how the Bill of Rights and

Oliver Wendall Holmes' interpretations guided the Supreme Court decision in the case. From OUR LIVING BILL OF RIGHTS series, Encyclopedia Britannica Educational Corp., 1966, 22 minutes.

THE RIGHT TO LEGAL COUNSEL

The 1963 Gideon vs. Wainwright decision requiring that indigent defendants accused of serious crimes must be offered counsel overruled an earlier decision in Betts vs. Brady. When tried with adequate legal representation, the defendant, Gideon, was acquitted. BFA Educational Media, 1968, 15 minutes.

V-17. REYNOLDS V. SIMS (1964)

By the early 1920's the population pattern of the United States was clearly changing. For the first time more Americans were living in cities than in rural areas. This changing pattern led to real inequalities in the population of urban and rural state legislative districts.

By 1960 nearly every state had some urban legislative districts with twice as many people in them as rural districts in the state. In Alabama, for example, the smallest House district had a population of 6,700 and the largest 104,000. People's votes are equal when each member of a legislative body represents the same number of people. Clearly, the people in more populous urban districts were not equally represented with voters in less populous rural districts. As a result, city and suburban problems did not get the attention in state legislatures that farming and rural concerns did.

Dominated by rural interests, state legislators refused to redistrict so that each member of the legislature would represent about the same number of people. Some simply ignored requirements in their state constitution to redistrict every ten years. Others redistricted but in ways that continued to favor rural interests. There was little voters could do to change things through the ballot box.

Thus, during the 1960's the Supreme Court heard a series of cases challenging the apportionment (set up) of state legislative districts. Reynolds v. Sims was a key case in this series. In Reynolds voters of Jefferson County, Alabama claimed that unequal districts in Alabama violated the equal protection clause of the 14th Amendent.

The Constitutional Issue

The 14th Amendment declares: "No state...shall deny to any person within its jurisdiction the equal protection of the laws." Did Alabama, and other states, violate the equal protection rights of voters by apportioning (setting up) legislative districts so they contained unequal numbers of people?

The Decision

The Supreme Court ruled 8 to 1 that the 14th Amendment required equally populated electoral districts for both houses of a state legislature. Chief Justice Earl Warren declared that plans for setting up legislative districts could not discriminate against people on the basis of where they live (city residents in this case) any more than they could on the basis of race or economic status.

The Court rejected the idea that, like Congress, state legislatures could create districts for the senate on an area rather than a population basis. The set up in Congress (which gave equal representation to states in the Senate no matter what their size) reflected the fact that states were "sovereign entities." Political subdivisions within a state (such as counties or regions), however, were not sovereign entities. Thus, Warren argued, the people of a state must be represented equally in both houses of a state legislature. "Legislators represent people, not trees or acres" Warren declared.

The Court ruled that legislative districts did not have to be drawn with "mathematical exactness or precision." However, such districts must be based "substantially" on equal population. Thus, the Court established the key principle of "one person, one vote."

The Reynolds decision had a major impact on state legislatures. After the decision 49 state legislatures reapportioned their legislative districts on the basis of equal population. Oregon had already done so in 1961. The decision resulted in fundamental changes in American politics by ending control of state legislatures by rural minorities. The decision also affected national politics since state legislatures drew the lines for U.S. Congressional districts.

WORKSHEET: REYNOLDS V. SIMS (1964)

1. What changes in the United States led to unequal state legislative districts? ______________________________

____

____

2. Which statements describe the effect unequal legislative districts had on American politics from the 1920's to the 1960's. Be prepared to explain your answers.

____ a. Some districts passed more laws than others.

____ b. Each person's vote was not worth as much as another.

____ c. Rural districts with small populations controlled state legislatures.

____ d. Every persons vote was equal to every others.

3. What was the Court's decision? ______________________________

____

4. The Court ruled each legislative district must contain exactly the same number of people. TRUE FALSE

5. The Court held that both houses of a state legislature must be apportioned on the basis of equal population. TRUE FALSE

6. The principle of "one person, one vote" means:

____ a. every person can vote only once in an election.

____ b. one person's vote should have the same value as another person's.

____ c. some people's votes are more important than other people's.

7. Which of the following are correct statements about the impact of the Reynolds decision. Be prepared to explain your choices.

____ a. the balance of power between urban and rural areas in the United States was changed.

____ b. the principle that all voters should be equal was clearly established.

____ c. the right of the states to make their own decisions about legislative districts was strengthened.

____ d. almost every state legislature reapportioned their districts as a result of the decision.

LESSON PLAN AND NOTES FOR TEACHERS

V-17. Reynolds v. Sims (1964)

Preview of Main Points

This lesson is a digest of one of the most significant Supreme Court decisions in American History. The decision declared that the equal protection clause of the 14th Amendment required both houses of a state legislature to be apportioned equally on the basis of population. The decision affirmed the principle of "one person, one vote."

Connection to Textbooks

The digest could be used to enrich brief references to this landmark case in government and history textbooks. It could be used with government texts to illustrate the impact Supreme Court decisions may have on the political process.

Objectives

Students are expected to:

1. know how and why the issue in this case arose;
2. understand how legislative districts with substantially unequal populations affects the right to an equal vote;
3. identify the principle of "one person, one vote" established by the decision;
4. explain the impact of the decision on state legislatures and American politics.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are going to analyze one of the most important Supreme Court decisions in American history.
- Review with students the meaning of a legislative district. A district is a political-geographical division of a state from which one member of a state legislature is elected. State legislative districts are drawn up by members of the state legislature itself.

Developing The Lesson

- Have students read the digest of the Reynolds case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet conduct a discussion about it.
- Be certain that students comprehend the issue, the decision, the constitutional basis of the decision and the political significance of the decision.

Concluding The Lesson

- Point out to students that Earl Warren often described the Reynolds case as the most significant decision of his judicial career. Remind them that this remark comes from a man who also led the high Court through such landmark decisions as Brown v. Board of Education. Ask students to explain why Warren might make such a statement, given their knowledge of the decision.

V-18. MIRANDA V. ARIZONA (1966)

During the 1960's the Supreme Court under Chief Justice Earl Warren made a series of decisions that greatly strengthened the rights of accused persons. One of the most important and controversial decisions involved Ernesto Miranda, an Arizona man, and the 5th Amendment.

In 1963 Miranda was arrested for kidnapping and attacking a young woman near Phoenix. He was identified by the woman at the police station and then questioned for two hours. He was not told that he had a right to refuse to answer questions or to see a lawyer. Miranda confessed, was tried and was convicted.

Miranda appealed his conviction to the U.S. Supreme Court. His lawyer claimed the police violated Miranda's 5th Amendment protection against self-incrimination. The 5th Amendment says: "No person...shall be compelled in any criminal case to be a witness against himself."

Arizona lawyers argued that Miranda could have asked for a lawyer any time during questioning. He had not done so. They also said no one had forced him to confess. His confession could be used in court because it had been given voluntarily.

The Constitutional Issue

Did the 5th Amendment require the police to inform a suspect of their right to remain silent and that anything they said could be held against them? Could the police use evidence obtained without such warnings in court?

The Decision

In a 5 to 4 decision the Court struck down Miranda's conviction. The Court ruled that the 5th Amendment required police to inform suspects in their custody of their right to remain silent, that anything they say could be held against them and that they have a right to a lawyer. These warnings, the Court said, must be given before any questioning could take place. A defendant could voluntarily waive these rights.

The Court added that if a suspect wants to remain silent or to contact a lawyer, police interrogation must stop until the suspect is ready to talk again or a lawyer is present. Confessions obtained in violation of this rule could not be used in court.

The *Miranda* decision was controversial. Many law enforcement officials complained the decision "handcuffed the police." In a strong dissent, Justice John Harlan argued: "It's obviously going to mean the disappearance of confessions as a legitimate tool of law enforcement." Chief Justice Warren and others defended the ruling. They argued that our system of justice is based on the idea that an individual is innocent until proven guilty. The government, they claimed, must produce evidence against an accused person. It cannot resort to forcing suspects to prove themselves guilty.

After the Miranda decision most police began carrying cards which they used to read suspects their rights. The card quickly became known as "Miranda cards."

WORKSHEET: MIRANDA V. ARIZONA (1966)

1. What crime was Ernesto Miranda charged with? ____________

____

2. Miranda claimed his constitutional rights were violated because the police:

____ a. questioned him for two hours.

____ b. did not tell him of his right to refuse to answer questions or see a lawyer.

____ c. let him go free on bail.

3. Which portion of the 5th Amendment did Miranda claim was violated by the police? ____________________________

____

4. Did the Court rule for or against Miranda? ____________

____

5. What did Justice Harlan argue in dissent? ____________

____

____

6. According to the Miranda decision, which of the following rights must police inform suspects of before they may question them?

____ a. They have a right to remain silent.

____ b. They have a right to one phone call.

____ c. They have a right to have a lawyer present.

____ d. They have a right to reasonable bail.

7. Which of the following are correct statements about the effects of this decision? Be prepared to explain your choices.

____ a. It expanded the rights of people accused of crime.

____ b. It increased the Court's power over the executive branch.

____ c. It reduced the reliance of police on confessions to convict people.

LESSON PLAN AND NOTES FOR TEACHERS

V-18. Miranda v. Arizona (1966)

Preview of Main Points

This lesson is a digest of a significant Supreme Court decision dealing with criminal procedure. The Court ruled that before any questioning by the police suspects must be warned that they have a right to remain silent, that any statement they do make may be used against them and that they have a right to the presence of an attorney.

Connection to Textbooks

The Miranda case could be used with government textbooks to supplement discussions of civil liberties and criminal procedure. It could be used with history textbooks to provide more in-depth explanations of the Warren Court era.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. identify the role of self-incrimination and the 5th Amendment in the case;
3. identify the warnings the Court required police to give all accused.
4. explain the significance of the decision.

Suggestions For Teaching the Lesson

Opening the Lesson

- Tell students they are going to analyze a case that greatly extended the rights of accused persons.
- Explain to students that some of the most important procedural safeguards in the Constitution involve the rights of persons accused of crime. These rights are contained in the 5th through 8th Amendments. Note that this case focused mainly on the 5th Amendment.

Developing the Lesson

- Have the students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.

- After students complete the worksheet, conduct a discussion about it.
- Be certain that students comprehend the issue, the decision and the significance of the decision.

Concluding the Lesson

- Explain to students that since 1966 there have been several Supreme Court decisions related to the issues raised in the *Miranda* case. Generally, these decisions have tended to reinforce and strengthen the Miranda rules. For example, in 1980, the Court defined "interrogation" when the accused has a right to have an attorney present as including not only direct questioning at the police station but also "any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response." (*Rhode Island v. Innis*)

V-19. HEART OF ATLANTA MOTEL V. UNITED STATES (1964)

In 1964 Congress passed the Civil Rights Act, the most comprehensive civil rights legislation since 1875. Title II of this law prohibited discrimination on the grounds of race, color, religion or national origin in public accommodations involved in any way in interstate commerce. Title II thus sought to end discrimination in hotels, motels, restaurants, concert halls, theaters, sports arenas and the like.

Congress based its power to regulate such businesses on the commerce clause in Article I (Section 8) of the Constitution. The commerce clause gives Congress the power to regulate commerce among the states. A case challenging the use of the commerce power by Congress to prevent racial discrimination came to the Supreme Court only a few months after the 1964 Civil Rights law was passed.

The Heart of Atlanta motel in downtown Atlanta, Georgia defied the new law by refusing to serve blacks. The motel owner claimed that Congress had exceeded its authority under the commerce clause by enacting Title II regulating local businesses such as hotels that served the public.

The owner also argued that his rights under the 5th Amendment were violated by Title II. The 5th Amendment says that no person shall be "deprived of life, liberty, or property, without due process of law." The motel owner claimed he was told through the new Civil Rights Act how to run what he considered to be his private property.

The Constitutional Issue

The case presented a major test of a key part of the new Civil Rights Act. Clearly the Constitution gave Congress the right to regulate interstate commerce. But did this commerce power include the power to prohibit discrimination in privately owned accommodations that served the public such as hotels and restaurants?

The Decision

The Supreme Court unanimously upheld Title II of the Civil Rights Act as a legitimate exercise of the commerce power. Justice Tom Clark, writing for the Court, noted that the motel did constitute interstate commerce since it sought out-of-state customers by advertising in national publications and that 75 percent of its guests were interstate travelers. Citing testimony from the congressional hearings on the act, Justice Clark pointed out that blacks were frequently discouraged from traveling because of the difficulty they found in obtaining accommodations. The motel's discrimination was obstruction to interstate commerce.

Next Clark turned to the meaning of the commerce power of Congress. He declared that Congress' power to regulate interstate commerce also gave it the authority to regulate local business that "might have a substantial and harmful effect" on interstate commerce.

Clark added that it made no difference that Congress had used its power under the commerce clause to achieve a moral goal--stopping discrimination. "Congress was not restricted by the fact that the particular obstruction to interstate commerce with which it was dealing was also deemed a moral and social wrong," he wrote.

Finally, the Court rejected the charge that the motel owner's rights to private property had been violated under the 5th Amendment. "In a long line of cases this Court has rejected the claim that the prohibition of racial discrimination in public accommodations interfers with personal liberty," declared the opinion.

The Supreme Court's decision helped give Congress the necessary constitutional tools to promote equality of opportunity and to prevent discrimination. The case was important to the civil rights movement of the 1960's. It put a solid constitutional base under legislative and political efforts to promote equal rights for blacks.

WORKSHEET: HEART OF ATLANTA MOTEL V. UNITED STATES (1964)

1. What did Title II of the Civil Rights Act prohibit?

____

____

2. What did the commerce clause of the Constitution (Article I, Section 8) have to do with the issue in this case? Select correct answers among the following statements. Be prepared to explain your answers.

____ a. Congress based Title II on its power to regulate interstate commerce.

____ b. The motel owner claimed the Supreme Court had no authority to rule on the commerce clause.

____ c. The motel owner argued the commerce clause did not allow Congress to regulate local businesses.

3. Did the Court's decision favor:

____ a. the motel owner

____ b. the national government

4. How was the Constitution used to support the decision in this case? Hint: what meaning did the Court give to the commerce power?

____

____

____

____

5. Which of the following are correct statements about the effects of this decision on America? Be prepared to explain your selections.

____ a. It increased the power of the national government over local affairs.

____ b. It greatly limited the ability of Congress to deal with racial discrimination.

____ c. It strengthened the civil rights movement of the 196[illegible].

LESSON PLAN AND NOTES FOR TEACHERS

V-19. Heart of Atlanta Motel v. United States (1964)

Preview of Main Points

This lesson is a digest of a landmark Supreme Court case involving the commerce clause (Article I, Section 8) and racial discrimination. The Court upheld Title II of the 1964 Civil Rights Act which prohibited discrimination in restaurants, hotels and other public accommodations. The Court ruled that under its authority to regulate interstate commerce Congress had the power to prohibit racial discrimination in privately owned public accommodations.

Connection to Textbooks

This decision extended the national government's power to reach into spheres of private discrimination which previously had been regarded as beyond the reach of federal law. The lesson could be used with government textbook material on the commerce power, federalism or civil rights. The lesson could supplement history textbook material on the civil rights movement of the 1960's.

Objectives

Students are expected to:

1. know how the issue in this case arose;

2. explain the connection of this issue to the commerce clause of the Constitution;

3. recognize how the Court's decision expanded the commerce power;

4. identify the impact of the decision on the civil rights movement and the ability of Congress to legislate against discrimination in local businesses.

Suggestions for Teaching the Lesson

Opening the Lesson

- Review with students the meaning of the commerce clause. Article I, Section 8 of the Constitution states that Congress shall have the power "to regulate commerce with foreign nations, and among the several states." The term "commerce" includes the production, and buying and selling of goods as well as the transportation of commodities. Any of these functions is subject to national regulation if they affect more than one state.

Over the years the commerce clause has been one of the major constitutional provisions used by Congress to expand the national government's power.

- Tell students that they are to analyze a Supreme Court case that expanded Congress' commerce power and helped spur on the civil rights movement of the 1960's.

Developing the Lesson

- Have students read the digest of the Heart of Atlanta case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain students understand the role of the commerce clause in the case and the significance of the Court's decision.

Concluding the Lesson

- Inform students that one leading political scientist, James Q. Wilson, described the impact of the 1964 Civil Rights Act by stating: "The passage of this bill ... profoundly altered the politics of civil rights and the political position of southern blacks." Ask students to explain this statement given their knowledge of the *Heart of Atlanta* case.
- You might wish to inform students that on the same day it decided the *Heart of Atlanta* case the Supreme Court decided a companion case that applied Title II to a restaurant in Birmingham, Alabama. In *Katzenback v. McClung* (1964) the Court ruled that Ollie's Barbeque a restaurant that served *only* local customers could not discriminate against blacks because 46 percent of the food it served was meat supplied through interstate commerce.

V-20. UNITED STATES V. NIXON (1974)

Beginning with George Washington, several presidents have asserted the right to withhold information from Congress or a court. The right of the President to do this has come to be called *executive privilege*. Presidents often have made such claims in the area of foreign affairs. In 1974, however, President Richard Nixon made a claim of executive privilege for another reason.

As a result of the Watergate scandal, seven of President Nixon's top aides were indicted on charges of obstructing justice. During their trials, it was discovered that Nixon had secretly tape-recorded conversations with his aides in the White House. A special prosecutor investigating the Watergate scandal subpoenaed the tapes for use as evidence in the criminal trial of Nixon's aides.

President Nixon refused to surrender the tapes. He said the record of his private conversations was protected by the principle of executive privilege. He argued that the doctrine of executive privilege was established clearly by the actions of many past Presidents. He also claimed that to allow another branch of government, the courts, to have the tapes would destroy the separation of powers established by the Constitution and would weaken the Presidency.

The Constitutional Issue

Did the constitutional principle of separation of powers and the doctrine of executive privilege prevent the courts from requiring the President to turn over confidential material needed for evidence in a criminal trial?

The Decision

The Supreme Court ruled unanimously against President Nixon. The Court ordered Nixon to turn over the tapes and other documents to the trial court for use as evidence.

Thus, the Supreme Court rejected the claim that either separation of powers or executive privilege could make the President immune from the judicial process. The Court's ruling meant that, unless important military or diplomatic secrets affecting national security were involved, the need to insure a fair trial outweighed the principle of executive privilege. The decision limited the doctrine of executive privilege by holding that it could not be used to prohibit disclosure of criminal conduct.

At the same time, the Court's decision for the first time acknowledged a constitutional base for executive privilege. The Constitution does not mention executive privilege, and until this decision legal scholars debated whether there was any real constitutional support for the idea.

In United States v. Nixon, the Supreme Court said there was. Chief Justice Burger said Presidents and their aides must be free to consider alternatives as they make decisions. In order to do so, they must be able to express themselves freely without fear their ideas will be exposed to the public. Thus, Burger wrote, "(executive) privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

WORKSHEET: UNITED STATES V. NIXON

1. What is meant by "executive privilege?" __________________

   ____

2. In this case, who brought the complaint to the Supreme Court?

   ____

3. How did Nixon respond to the request for his tapes? Choose the correct answers.

_____ a. He destroyed all of the tapes.

_____ b. He argued that giving up the tapes would "blow" the cover of some CIA agents.

_____ c. He argued that a president's conversations with his aides must be kept confidential.

_____ d. He argued that separation of powers prevented judicial review of his claim of executive privilege.

4. Did the decision in this case favor Nixon or the United States Government? ______________________________

5. Which of the following statements are correct about the nature of this decision?

_____ a. The Court ruled that there is no constitutional basis for executive privilege.

_____ b. The Court said that the need for evidence in a criminal trial is greater than the need for executive privilege.

_____ c. The Court said that the effect of Article II of the Constitution is to make executive privilege unlimited.

6. In what way did the Court's decision put limits on the doctrine of executive privilege? __________________________

   ____

7. In what way did the Court's decision strengthen the doctrine of executive privilege? __________________________

   ____

8. Over-all, do you think the Court's decision strengthened or weakened the Presidency? ______________________

   Explain. ____

   ____

LESSON PLAN AND NOTES FOR TEACHERS

V-20. United States v. Nixon (1974)

Preview of Main Points

This lesson is a digest of a landmark case on the powers of the Presidency. The case focuses on the conflict between the President's need to maintain confidentiality in the Presidential decision making process and the judicial branch's need to ensure a fair trial.

Connection to Textbooks

United States v. Nixon clearly illustrates one of the most fundamental principles of American democracy: the rule of law. The case demonstrated that no one -- not even the President -- is above the law. This lesson could be used in conjunction with government textbook discussions of the Supreme Court or the Presidency. It could be used with history textbook discussions of executive privilege in any era or with the chapter on the Nixon presidency.

Objectives

Students are expected to:

1. know how the issue in this case arose;
2. know the meaning of executive privilege;
3. identify the constitutional arguments advanced by Nixon in support of his position;
4. understand how the Court both limited executive privilege and at the same time gave it a solid constitutional base.

Suggestions For Teaching The Lesson

Opening The Lesson

- Tell students they are to analyze a Supreme Court case reflecting the basic American ideal of the rule of law. Note that, in addition, the case marks the first time since 1787 that the Supreme Court supported the idea that there was a constitutional basis for "executive privilege" -- an important Presidential prerogative that had developed over the years.

Developing The Lesson

- Have students read the digest of the case.
- Ask students to use the worksheet, which follows the digest, to analyze the case.
- After students complete the worksheet, conduct a discussion about it.
- Be certain that students understand the basic constitutional issue in the case: the President's need for privacy in making decisions and dealing with aides (executive privilege) versus the courts' need to obtain evidence to ensure due process of law and a fair trial as guaranteed by the Bill of Rights.

Concluding The Lesson

- Focus students' attention on the 5th Amendment guarantee of "due process of law" and the 6th Amendment guarantee of the right of the accused person to "have compulsory process for obtaining witnesses (including evidence) in his favor." Ask how President Nixon's claim of executive privilege would have interfered with these rights.
- Inform students the Supreme Court's decision had a dramatic aftermath. One of the tapes subpoenaed by the Court included conversations of the President, which showed he personally ordered a cover-up of a burglary of the Democratic party's headquarters in the Watergate office building. Less than two weeks after the Court's decision, President Nixon released a transcript of this tape. Four days later, on August 9, 1974, Richard Nixon (threatened with impeachment) resigned the Presidency as a result of the evidence on the tape linking him directly to the Watergate burglary.

Suggested Reading

White, Theodore H. Breach of Faith: The Fall of Richard Nixon (New York: Atheneum Publishers, 1975).

This is a very readable account of the Watergate scandal, the case of the United States v. Nixon and the resignation of President Nixon.

APPENDIX

This appendix includes the Constitution of the United States and brief quotations, which reveal alternative perspectives on the Constitution of Presidents, federal judges, members of Congress, and foreign commentators.

The text of the Constitution, presented on the following pages, is from the engrossed copy, which is now enshrined in the National Archives. Portions of the original text, which have been affected by amendments, are enclosed by heavy brackets, with footnotes referring to the pertinent amendment. In addition, commentaries about the proposal and ratification of each amendment are presented below the pertinent amendment.

Users of this book of lessons may refer to this or another copy of the Constitution to find answers to several questions and activities in Chapters 2, 3 and 4 of this book. They may also read all or parts of it to illuminate certain principles of American government or to comprehend more fully constitutional issues. President Harry Truman, among others, recommended the Constitution to citizens as essential reading. Truman said: "The longer I live, the more I am impressed with our American Constitution. Read it and think about it. It is a plan, but not a strait jacket, flexible and short. Read it one hundred times and you'll always find something new."*

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*Harry S Truman. Truman Speaks (New York: Columbia University Press, 1960), p. 41.

CONSTITUTION OF THE UNITED STATES

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE. I.

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.].[*] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Note.—This text of the Constitution follows the engrossed copy signed by Gen. Washington and the deputies from 12 States. The superior number preceding the paragraphs designates the number of the clause; it was not in the original.

[*] The part included in heavy brackets was changed by section 2 of the fourteenth amendment.

SECTION. 3. [1] The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature thereof,]* for six Years; and each Senator shall have one Vote.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies].**

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December,]*** unless they shall by Law appoint a different Day.

SECTION. 5. [1] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judg-

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*The part included in heavy brackets was changed by section 1 of the seventeenth amendment.

**The part included in heavy brackets was changed by clause 2 of the seventeenth amendment.

***The part included in heavy brackets was changed by section 2 of the twentieth amendment.

ment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

SECTION. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[*4] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5] No Tax or Duty shall be laid on Articles exported from any State.

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[*] See also the sixteenth amendment.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION. 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE. II.

SECTION. 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest

Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.]*

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office,† the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION. 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Con-

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*This paragraph has been superseded by the twelfth amendment.

†This provision has been affected by the twenty-fifth amendment.

sent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE. III.

SECTION. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;*—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State,

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*This clause has been affected by the eleventh amendment.

the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE. IV.

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3] [No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.]*

Section. 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided [that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and]* that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

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*This paragraph has been superseded by the thirteenth amendment.

ARTICLE. VI.

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE. VII.

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth IN WITNESS whereof We have hereunto subscribed our Names.

G^{o} WASHINGTON—
Presid^{t}. and deputy from Virginia.

[Signed also by the deputies of twelve States.]

New Hampshire.

JOHN LANGDON,
NICHOLAS GILMAN.

Massachusetts.

NATHANIEL GORHAM,
RUFUS KING.

Connecticut.

WM. SAML. JOHNSON,
ROGER SHERMAN.

New York.

ALEXANDER HAMILTON.

New Jersey.

WIL: LIVINGSTON,
DAVID BREARLEY,
WM. PATERSON,
JONA: DAYTON.

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*Obsolete.

Pennsylvania.

B Franklin,
Rob^{t} Morris,
Thos. FitzSimons,
James Wilson,
Thomas Mifflin,
Geo. Clymer,
Jared Ingersoll,
Gouv Morris.

Delaware.

Geo: Read,
John Dickinson,
Jaco: Broom,
Gunning Bedford, jun,
Richard Bassett.

Maryland.

James McHenry,
Dan^{l} Carroll.
Dan of S^{t} Thos. Jenifer,

Virginia.

John Blair—
James Madison Jr.

North Carolina.

Wm. Blount,
Hu Williamson.
Rich'd Dobbs Spaight,

South Carolina.

J. Rutledge
Charles Pinckney,
Charles Cotesworth Pinckney,
Pierce Butler.

Georgia.

William Few,
Abr Baldwin.

Attest: William Jackson, *Secretary.*

RATIFICATION OF THE CONSTITUTION

The Constitution was adopted by a convention of the States on September 17, 1787, and was subsequently ratified by the several States, on the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788.

Ratification was completed on June 21, 1788.

The Constitution was subsequently ratified by Virginia, June 25, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790; and Vermont, January 10, 1791.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

ARTICLE [I]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE [II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ARTICLE [III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE [IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defence.

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*Only the 13th, 14th, 15th, and 16th articles of amendment had numbers assigned to them at the time of ratification.

ARTICLE [VII]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

ARTICLE [VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE [IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE [X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The first 10 amendments to the Constitution, and 2 others that failed of ratification, were proposed by the Congress on September 25, 1789. They were ratified by the following States, and the notifications of the ratification by the Governors thereof were successively communicated by the President to the Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; New York, February 24, 1790; Pennsylvania, March 10, 1790; Rhode Island, June 7, 1790; Vermont, November 3, 1791; and Virginia, December 15, 1791.

Ratification was completed on December 15, 1791.

The amendments were subsequently ratified by Massachusetts, March 2, 1939; Georgia, March 18, 1939; and Connecticut, April 19, 1939.

ARTICLE [XI]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The 11th amendment to the Constitution was proposed by the Congress on March 4, 1794. It was declared, in a message from the President to Congress, dated January 8, 1798 to have been ratified by the legislatures of 12 of the 15 States. The dates of ratification were: New York, March 27, 1794; Rhode Island, March 31, 1794; Connecticut, May 8, 1794; New Hampshire, June 16, 1794; Massachusetts, June 26, 1794; Vermont, between October 9, 1794 and November 9, 1794; Virginia, November 18, 1794; Georgia, November 29, 1794; Kentucky, December 7, 1794; Maryland, December 26, 1794; Delaware, January 23, 1795; North Carolina, February 7, 1795.

Ratification was completed on February 7, 1795.

The amendment was subsequently ratified by South Carolina on December 4, 1797. New Jersey and Pennsylvania did not take action on the amendment.

ARTICLE [XII]

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. [And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The 12th amendment to the Constitution was proposed by the Congress on December 9, 1803. It was declared, in a proclamation of the Secretary of State, dated September 25, 1804, to have been ratified by the legislatures of 13 of the 17 States. The dates of ratification were: North Carolina, December 21, 1803; Maryland, December 24, 1803; Kentucky, December 27, 1803; Ohio, December 30, 1803; Pennsylvania, January 5, 1804; Vermont, January 30, 1804; Virginia, February 3, 1804; New York, February 10, 1804; New Jersey, February 22, 1804; Rhode Island, March 12, 1804; South Carolina, May 15, 1804; Georgia, May 19, 1804; New Hampshire, June 15, 1804.

Ratification was completed on June 15, 1804.

The amendment was subsequently ratified by Tennessee, July 27, 1804.

The amendment was rejected by Delaware, January 18, 1804; Massachusetts, February 3, 1804; Connecticut, at its session begun May 10, 1804.

ARTICLE XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly con-

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***The part included in heavy brackets has been superseded by section 3 of the twentieth amendment.**

victed, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

The 13th amendment to the Constitution was proposed by the Congress on January 31, 1865. It was declared, in a proclamation of the Secretary of State, dated December 18, 1865, to have been ratified by the legislatures of 27 of the 36 States. The dates of ratification were: Illinois, February 1, 1865; Rhode Island, February 2, 1865; Michigan, February 2, 1865; Maryland, February 3, 1865; New York, February 3, 1865; Pennsylvania, February 3, 1865: West Virginia, February 3, 1865; Missouri, February 6, 1865; Maine, February 7, 1865; Kansas, February 7, 1865; Massachusetts, February 7, 1865; Virginia, February 9, 1865; Ohio, February 10, 1865; Indiana, February 13, 1865; Nevada, February 16, 1865; Louisiana, February 17, 1865; Minnesota, February 23, 1865; Wisconsin, February 24, 1865; Vermont, March 9, 1865; Tennessee, April 7, 1865; Arkansas, April 14, 1865; Connecticut, May 4, 1865; New Hampshire, July 1, 1865; South Carolina, November 13, 1865; Alabama, December 2, 1865; North Carolina, December 4, 1865; Georgia, December 6, 1865.

Ratification was completed on December 6, 1865.

The amendment was subsequently ratified by Oregon, December 8, 1865; California, December 19, 1865; Florida, December 28, 1865 (Florida again ratified on June 9, 1868, upon its adoption of a new constitution); Iowa, January 15, 1866; New Jersey, January 23, 1866 (after having rejected it on March 16, 1865); Texas, February 18, 1870; Delaware, February 12, 1901 (after having rejected it on February 8, 1865; Kentucky, March 18, 1976 (after having rejected it on February 24, 1865).

The amendment was rejected (and not subsequently ratified) by Mississippi, December 4, 1865.

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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*See, the twenty-sixth amendment.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The 14th amendment to the Constitution was proposed by the Congress on June 13, 1866. It was declared, in a certificate by the Secretary of State dated July 28, 1868, to have been ratified by the legislatures of 28 of the 37 States. The dates of ratification were: Connecticut, June 25, 1866; New Hampshire, July 6, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866 (subsequently the legislature rescinded its ratification, and on March 5, 1868, readopted its resolution of rescission over the Governor's veto); Oregon, September 19, 1866 (and rescinded its ratification on October 15, 1868); Vermont, October 30, 1866; Ohio, January 4, 1867 (and rescinded its ratification on January 15, 1868); New York, January 10, 1867; Kansas, January 11, 1867; Illinois, January 15, 1867; West Virginia, January 16, 1867; Michigan, January 16, 1867; Minnesota, January 16, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Indiana, January 23, 1867; Missouri, January 25, 1867; Rhode Island, February 7, 1867; Wisconsin, February 7, 1867; Pennsylvania, February 12, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, March 16, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; North Carolina, July 4, 1868 (after having rejected it on December 14, 1866); Louisiana, July 9, 1868 (after having rejected it on February 6, 1867); South Carolina, July 9, 1868 (after having rejected it on December 20, 1866).

Ratification was completed on July 9, 1868.[1]

The amendment was subsequently ratified by Alabama, July 13, 1868; Georgia, July 21, 1868 (after having rejected it on November 9, 1866); Virginia, October 8, 1869 (after having rejected it on January 9, 1867); Mississippi, January 17, 1870; Texas, February 18, 1870 (after having rejected it on October 27, 1866); Delaware, February 12, 1901 (after having rejected it on February 8, 1867); Maryland, April 4, 1959 (after having rejected it on March 23, 1867); California, May 6, 1959; Kentucky, March 18, 1976 (after having rejected it on January 8, 1867).

ARTICLE XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

The 15th amendment to the Constitution was proposed by the Congress on February 26, 1869. It was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of 29 of the 37 States. The dates of ratification were: Nevada, March 1, 1869; West Virginia, March 3, 1869; Illinois, March 5, 1869; Louisiana, March 5, 1869; North Carolina, March 5, 1869; Michigan, March 8, 1869; Wisconsin, March 9, 1869; Maine, March 11, 1869; Massachusetts, March 12, 1869; Arkansas, March 15, 1869; South Carolina, March 15, 1869; Pennsylvania, March 25, 1869; New York, April 14, 1869 (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it, which action it rescinded on March 30, 1970); Indiana, May 14, 1869; Connecticut, May 19, 1869; Florida, June 14, 1869; New Hampshire, July 1, 1869; Virginia, October 8, 1869; Vermont, October 20, 1869; Missouri, January 7, 1870; Minnesota, January 13, 1870; Mississippi, January 17, 1870; Rhode Island, January 18, 1870; Kansas, January 19, 1870; Ohio, January 27, 1870 (after having rejected it on April 30, 1869); Georgia, February 2, 1870; Iowa, February 3, 1870.

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[1] The certificate of the Secretary of State, dated July 20, 1868 [15 Stat. 706, 707], was based on the assumption of invalidity of the rescission of ratification by Ohio and New Jersey. The following day, the Congress adopted a joint resolution declaring the amendment a part of the Constitution. On July 28, 1868, the Secretary of State issued a proclamation of ratification without reservation [15 Stat. 708–711]. In the interim, two other States, Alabama on July 13 and Georgia on July 21, 1868, had added their ratifications.

Ratification was completed on February 3, 1870, unless the withdrawal of ratification by New York was effective; in which event ratification was completed on February 17, 1870, when Nebraska ratified.

The amendment was subsequently ratified by Texas, February 18, 1870; New Jersey, February 15, 1871 (after having rejected it on February 7, 1870); Delaware, February 12, 1901 (after having rejected it on March 18, 1869); Oregon, February 24, 1959; California, April 3, 1962 (after having rejected it on January 28, 1870); Kentucky, March 18, 1976 (after having rejected it on March 12, 1869).

The amendment was approved by the Governor of Maryland, May 7, 1973; Maryland having previously rejected it on February 26, 1870.

The amendment was rejected (and not subsequently ratified) by Tennessee, November 16, 1869.

ARTICLE XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The 16th amendment to the Constitution was proposed by the Congress on July 12, 1909. It was declared, in a proclamation of the Secretary of State, dated February 25, 1913, to have been ratified by 36 of the 48 States. The dates of ratification were: Alabama, August 10, 1909; Kentucky, February 8, 1910; South Carolina, February 19, 1910; Illinois, March 1, 1910; Mississippi, March 7, 1910; Oklahoma, March 10, 1910; Maryland, April 8, 1910; Georgia, August 3, 1910; Texas, August 16, 1910; Ohio, January 19, 1911; Idaho, January 20, 1911; Oregon, January 23, 1911; Washington, January 26, 1911; Montana, January 30, 1911; Indiana, January 30, 1911; California, January 31, 1911; Nevada, January 31, 1911; South Dakota, February 3, 1911; Nebraska, February 9, 1911; North Carolina, February 11, 1911; Colorado, February 15, 1911; North Dakota, February 17, 1911; Kansas, February 18, 1911; Michigan, February 23, 1911; Iowa, February 24, 1911; Missouri, March 16, 1911; Maine, March 31, 1911; Tennessee, April 7, 1911; Arkansas, April 22, 1911 (after having rejected it earlier); Wisconsin, May 26, 1911; New York, July 12, 1911; Arizona, April 6, 1912; Minnesota, June 11, 1912; Louisiana, June 28, 1912; West Virginia, January 31, 1913; New Mexico, February 3, 1913.

Ratification was completed on February 3, 1913.

The amendment was subsequently ratified by Massachusetts, March 4, 1913; New Hampshire, March 7, 1913 (after having rejected it on March 2, 1911).

The amendment was rejected (and not subsequently ratified) by Connecticut, Rhode Island, and Utah.

ARTICLE [XVII]

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

The 17th amendment to the Constitution was proposed by the Congress on May 13, 1912. It was declared, in a proclamation by the Secretary of State, dated May 31, 1913, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Massachusetts, May 22, 1912; Arizona, June 3, 1912; Minnesota, June 10, 1912; New York, January 15, 1913; Kansas, January 17, 1913; Oregon, January 23, 1913; North Carolina, January 25, 1913; California, January 28, 1913; Michigan, January 28, 1913; Iowa, January 30, 1913; Montana, January 30, 1913; Idaho, January 31, 1913; West Virginia, February 4, 1913; Colorado, February 5, 1913; Nevada, February 6, 1913; Texas, February 7, 1913; Washington, February 7, 1913; Wyoming, February 8, 1913; Arkansas, February 11, 1913; Maine, February 11, 1913; Illinois, February 13, 1913; North Dakota, February 14, 1913; Wisconsin, February 18, 1913; Indiana, February 19, 1913; New Hampshire, February 19, 1913; Vermont, February 19, 1913; South Dakota, February 19, 1913; Oklahoma, February 24, 1913; Ohio, February 25, 1913; Missouri, March 7, 1913; New Mexico, March 13, 1913; Nebraska, March 14, 1913; New Jersey, March 17, 1913; Tennessee, April 1, 1913; Pennsylvania, April 2, 1913; Connecticut, April 8, 1913.

Ratification was completed on April 8, 1913.

The amendment was subsequently ratified by Louisiana, June 11, 1914.

The amendment was rejected (and not subsequently ratified) by Utah, February 26, 1913.

[ARTICLE [XVIII]

[SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[SECTION 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

[SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.]*

The 18th amendment to the Constitution was proposed by the Congress on December 18, 1917. It was declared, in a proclamation by the Acting Secretary of State, dated January 29, 1919, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Mississippi, January 8, 1918; Virginia, January 11, 1918; Kentucky, January 14, 1918; North Dakota, January 25, 1918; South Carolina, January 29, 1918; Maryland, February 13, 1918; Montana, February 19, 1918; Texas, March 4, 1918; Delaware, March 18, 1918; South Dakota, March 20, 1918; Massachusetts, April 2, 1918; Arizona, May 24, 1918; Georgia, June 26, 1918; Louisiana, August 3, 1918; Florida, December 3, 1918; Michigan, January 2, 1919; Ohio, January 7, 1919; Oklahoma, January 7, 1919; Idaho, January 8, 1919; Maine, January 8, 1919; West Virginia, January 9, 1919; California, January 13, 1919; Tennessee, January 13, 1919; Washington, January 13, 1919; Arkansas, January 14, 1919; Kansas, January 14, 1919; Alabama, January 15, 1919; Colorado, January 15, 1919; Iowa, January 15, 1919; New Hampshire, January 15, 1919; Oregon, January 15, 1919; Nebraska, January 16, 1919; North Carolina, January 16, 1919; Utah, January 16, 1919; Missouri, January 16, 1919; Wyoming, January 16, 1919.

** Ratification was completed on January 16, 1919.

The amendment was subsequently ratified by Minnesota on January 17, 1917; Wisconsin, January 17, 1919; New Mexico, January 20, 1919; Nevada, January 21, 1919; New York, January 29, 1919; Vermont, January 29, 1919; Pennsylvania, February 25, 1919; Connecticut, May 6, 1919; and New Jersey, March 9, 1922.

The amendment was rejected (and not subsequently ratified) by Rhode Island.

ARTICLE [XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

The 19th amendment to the Constitution was proposed by the Congress on June 4, 1919. It was declared, in a certificate by the Secretary of State, dated

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*Repealed by section 1 of the twenty-first amendment.

**See *Dillon* v. *Gloss*, 256 U.S. 368, 376 (1921).

August 26, 1920, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Illinois, June 10, 1919 (and that State readopted its resolution of ratification June 17, 1919); Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920.

Ratification was completed on August 18, 1920.

The amendment was subsequently ratified by Connecticut on September 14, 1920 (and that State reaffirmed on September 21, 1920); Vermont, February 8, 1921; Maryland, March 29, 1941 (after having rejected it on February 24, 1920; ratification certified on February 25, 1958); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920; ratification certified on August 22, 1973); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971.

The amendment was rejected (and not subsequently ratified) by Mississippi, March 29, 1920; Delaware, June 2, 1920.

ARTICLE [XX]

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

SECTION 3.[*] If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

SECTION 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

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[*] See, the twenty-fifth amendment.

The 20th amendment to the Constitution was proposed by the Congress on March 2, 1932. It was declared, in a certificate by the Secretary of State, dated February 6, 1933, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Virginia, March 4, 1932; New York, March 11, 1932; Mississippi, March 16, 1932; Arkansas, March 17, 1932; Kentucky, March 17, 1932; New Jersey, March 21, 1932; South Carolina, March 25, 1932; Michigan, March 31, 1932; Maine, April 1, 1932; Rhode Island, April 14, 1932; Illinois, April 21, 1932; Louisiana, June 22, 1932; West Virginia, July 30, 1932; Pennsylvania, August 11, 1932; Indiana, August 15, 1932; Texas, September 7, 1932; Alabama, September 13, 1932; California, January 4, 1933; North Carolina, January 5, 1933; North Dakota, January 9, 1933; Minnesota, January 12, 1933; Arizona, January 13, 1933; Montana, January 13, 1933; Nebraska, January 13, 1933; Oklahoma, January 13, 1933; Kansas, January 16, 1933; Oregon, January 16, 1933; Delaware, January 19, 1933; Washington, January 19, 1933; Wyoming, January 19, 1933; Iowa, January 20, 1933; South Dakota, January 20, 1933; Tennessee, January 20, 1933; Idaho, January 21, 1933; New Mexico, January 21, 1933; Georgia, January 23, 1933; Missouri, January 23, 1933; Ohio, January 23, 1933; Utah, January 23, 1933.

Ratification was completed on January 23, 1933.

The amendment was subsequently ratified by Massachusetts on January 24, 1933; Wisconsin, January 24, 1933; Colorado, January 24, 1933; Nevada, January 26, 1933; Connecticut, January 27, 1933; New Hampshire, January 31, 1933; Vermont, February 2, 1933; Maryland, March 24, 1933; Florida, April 26, 1933.

ARTICLE [XXI]

SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

SECTION 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

The 21st amendment to the Constitution was proposed by the Congress on February 20, 1933. It was declared, in a certificate of the Acting Secretary of State, dated December 5, 1933, to have been ratified by conventions in 36 of the 48 States. The dates of ratification were: Michigan, April 10, 1933; Wisconsin, April 25, 1933; Rhode Island, May 8, 1933; Wyoming, May 25, 1933; New Jersey, June 1, 1933; Delaware, June 24, 1933; Indiana, June 26, 1933; Massachusetts, June 26, 1933; New York, June 27, 1933; Illinois, July 10, 1933; Iowa, July 10, 1933; Connecticut, July 11, 1933; New Hampshire, July 11, 1933; California, July 24, 1933; West Virginia, July 25, 1933; Arkansas, August 1, 1933; Oregon, August 7, 1933; Alabama, August 8, 1933; Tennessee, August 11, 1933; Missouri, August 29, 1933; Arizona, September 5, 1933; Nevada, September 5, 1933; Vermont, September 23, 1933; Colorado, September 26, 1933; Washington, October 3, 1933; Minnesota, October 10, 1933; Idaho, October 17, 1933; Maryland, October 18, 1933; Virginia, October 25, 1933; New Mexico, November 2, 1933; Florida, November 14, 1933; Texas, November 24, 1933; Kentucky, November 27, 1933; Ohio, December 5, 1933; Pennsylvania, December 5, 1933; Utah, December 5, 1933.

Ratification was completed on December 5, 1933.

The amendment was subsequently ratified by Maine, December 6, 1933; Montana, August 6, 1934.

The amendment was rejected (and not subsequently ratified) by South Carolina, December 4, 1933.

ARTICLE [XXII]

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

The 22d amendment to the Constitution was proposed by the Congress on March 21, 1947. It was declared, in a certificate by the Administrator of General Services, dated March 1, 1951, to have been ratified by the legislatures of 36 of the 48 States. The dates of ratification were: Maine, March 31, 1947; Michigan, March 31, 1947; Iowa, April 1, 1947; Kansas, April 1, 1947; New Hampshire, April 1, 1947; Delaware, April 2, 1947; Illinois, April 3, 1947; Oregon, April 3, 1947; Colorado, April 12, 1947; California, April 15, 1947; New Jersey, April 15, 1947; Vermont, April 15, 1947; Ohio, April 16, 1947; Wisconsin, April 16, 1947; Pennsylvania, April 29, 1947; Connecticut, May 21, 1947; Missouri, May 22, 1947; Nebraska, May 23, 1947; Virginia, January 28, 1948; Mississippi, February 12, 1948; New York, March 9, 1948; South Dakota, January 21, 1949; North Dakota, February 25, 1949; Louisiana, May 17, 1950; Montana, January 25, 1951; Indiana, January 29, 1951; Idaho, January 30, 1951; New Mexico, February 12, 1951; Wyoming, February 12, 1951; Arkansas, February 15, 1951; Georgia, February 17, 1951; Tennessee, February 20, 1951; Texas, February 22, 1951; Nevada, February 26, 1951; Utah, February 26, 1951; Minnesota, February 27, 1951.

Ratification was completed on February 27, 1951.

The amendment was subsequently ratified by North Carolina on February 28, 1951; South Carolina, March 13, 1951; Maryland, March 14, 1951; Florida, April 16, 1951; Alabama, May 4, 1951.

The amendment was rejected (and not subsequently ratified) by Oklahoma in June 1947; Massachusetts, June 9, 1949.

ARTICLE [XXIII]

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

The 23d amendment to the Constitution was proposed by the Congress on June 17, 1960. It was declared, in a certificate by the Administrator of General Services, to have been ratified by 38 of the 50 States. The dates of ratification were: Hawaii, June 23, 1960 (and that State made a technical correction to its resolution on June 30, 1960); Massachusetts, August 22, 1960; New Jersey,

December 19, 1960; New York, January 17, 1961; California, January 19, 1961; Oregon, January 27, 1961; Maryland, January 30, 1961; Idaho, January 31, 1961; Maine, January 31, 1961; Minnesota, January 31, 1961; New Mexico, February 1, 1961; Nevada, February 2, 1961; Montana, February 6, 1961; South Dakota, February 6, 1961; Colorado, February 8, 1961; Washington, February 9, 1961; West Virginia, February 9, 1961; Alaska, February 10, 1961; Wyoming, February 13, 1961; Delaware, February 20, 1961; Utah, February 21, 1961; Wisconsin, February 21, 1961; Pennsylvania, February 28, 1961; Indiana, March 3, 1961; North Dakota, March 3, 1961; Tennessee, March 6, 1961; Michigan, March 8, 1961; Connecticut, March 9, 1961; Arizona, March 10, 1961; Illinois, March 14, 1961; Nebraska, March 15, 1961; Vermont, March 15, 1961; Iowa, March 16, 1961; Missouri, March 20, 1961; Oklahoma, March 21, 1961; Rhode Island, March 22, 1961; Kansas, March 29, 1961; Ohio, March 29, 1961.

Ratification was completed on March 29, 1961.

The amendment was subsequently ratified by New Hampshire on March 30, 1961 (when that State annulled and then repeated its ratification of March 29, 1961).

The amendment was rejected (and not subsequently ratified) by Arkansas on January 24, 1961.

ARTICLE [XXIV]

SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The 24th amendment to the Constitution was proposed by the Congress on August 27, 1962. It was declared, in a certificate of the Administrator of General Services, dated February 4, 1964, to have been ratified by the legislatures of 38 of the 50 States. The dates of ratification were: Illinois, November 14, 1962; New Jersey, December 3, 1962; Oregon, January 25, 1963; Montana, January 28, 1963; West Virginia, February 1, 1963; New York, February 4, 1963; Maryland, February 6, 1963; California, February 7, 1963; Alaska, February 11, 1963; Rhode Island, February 14, 1963; Indiana, February 19, 1963; Utah, February 20, 1963; Michigan, February 20, 1963; Colorado, February 21, 1963; Ohio, February 27, 1963; Minnesota, February 27, 1963; New Mexico, March 5, 1963; Hawaii, March 6, 1963; North Dakota, March 7, 1963; Idaho, March 8, 1963; Washington, March 14, 1963; Vermont, March 15, 1963; Nevada, March 19, 1963; Connecticut, March 20, 1963; Tennessee, March 21, 1963; Pennsylvania, March 25, 1963; Wisconsin, March 26, 1963; Kansas, March 28, 1963; Massachusetts, March 28, 1963; Nebraska, April 4, 1963; Florida, April 18, 1963; Iowa, April 24, 1963; Delaware, May 1, 1963; Missouri, May 13, 1963; New Hampshire, June 12, 1963; Kentucky, June 27, 1963; Maine, January 16, 1964; South Dakota, January 23, 1964.

Ratification was completed on January 23, 1964.

The amendment was rejected (and not subsequently ratified) by Mississippi on December 20, 1962.

ARTICLE [XXV]

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

The 25th amendment to the Constitution was proposed by the Congress on July 6, 1965. It was declared, in a certificate of the Administrator of General Services, dated February 23, 1967, to have been ratified by the legislatures of 39 of the 50 States. The dates of ratification were: Nebraska, July 12, 1965; Wisconsin, July 13, 1965; Oklahoma, July 16, 1965; Massachusetts, August 9, 1965; Pennsylvania, August 18, 1965; Kentucky, September 15, 1965; Arizona, September 22, 1965; Michigan, October 5, 1965; Indiana, October 20, 1965; California, October 21, 1965; Arkansas, November 4, 1965; New Jersey, November 29, 1965; Delaware, December 7, 1965; Utah, January 17, 1966; West Virginia, January 20, 1966; Maine, January 24, 1966; Rhode Island, January 28, 1966; Colorado, February 3, 1966; New Mexico, February 3, 1966; Kansas, February 8, 1966; Vermont, February 10, 1966; Alaska, February 18, 1966; Idaho, March 2, 1966; Hawaii, March 3, 1966; Virginia, March 8, 1966; Mississippi, March 10, 1966; New York, March 14, 1966; Maryland, March 23, 1966; Missouri, March 30, 1966; New Hampshire, June 13, 1966; Louisiana, July 5, 1966; Tennessee, January 12, 1967; Wyoming, January 25, 1967; Washington, January 26, 1967; Iowa, January 26, 1967; Oregon, February 2, 1967; Minnesota, February 10, 1967; Nevada, February 10, 1967.

Ratification was completed on February 10, 1967.

The amendment was subsequently ratified by Connecticut, February 14, 1967; Montana, February 15, 1967; South Dakota, March 6, 1967; Ohio, March 7, 1967; Alabama, March 14, 1967; North Carolina, March 22, 1967; Illinois, March 22, 1967; Texas, April 25, 1967; Florida, May 25, 1967.

ARTICLE [XXVI]

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

The 26th amendment to the Constitution was proposed by the Congress on March 23, 1971. It was declared, in a certificate of the Administrator of General Services, dated July 5, 1971, to have been ratified by the legislatures of 39 of the 50 States. The dates of ratification were: Connecticut, March 23, 1971; Delaware, March 23, 1971; Minnesota, March 23, 1971; Tennessee, March 23, 1971; Washington, March 23, 1971; Hawaii, March 24, 1971; Massachusetts, March 24, 1971; Montana, March 29, 1971; Arkansas, March 30, 1971; Idaho, March 30, 1971; Iowa, March 30, 1971; Nebraska, April 2, 1971; New Jersey, April 3, 1971; Kansas, April 7, 1971; Michigan, April 7, 1971; Alaska, April 8, 1971; Maryland, April 8, 1971; Indiana, April 8, 1971; Maine, April 9, 1971; Vermont, April 16, 1971; Louisiana, April 17, 1971; California, April 19, 1971; Colorado, April 27, 1971; Pennsylvania, April 27, 1971; Texas, April 27, 1971; South Carolina, April 28, 1971; West Virginia, April 28, 1971; New Hampshire, May 13, 1971; Arizona, May 14, 1971; Rhode Island, May 27, 1971; New York, June 2, 1971; Oregon, June 4, 1971; Missouri, June 14, 1971; Wisconsin, June 22, 1971; Illinois, June 29, 1971; Alabama, June 30, 1971; Ohio, June 30, 1971; North Carolina, July 1, 1971; Oklahoma, July 1, 1971.

Ratification was completed on July 1, 1971.

The amendment was subsequently ratified by Virginia, July 8, 1971; Wyoming, July 8, 1971; Georgia, October 4, 1971.

[EDITORIAL NOTE: There is some conflict as to the exact dates of ratification of the amendments by the several States. In some cases, the resolutions of ratification were signed by the officers of the legislatures on dates subsequent to that on which the second house had acted. In other cases, the Governors of several of the States "approved" the resolutions (on a subsequent date), although action by the Governor is not contemplated by article V, which requires ratification by the legislatures (or conventions) only. In a number of cases, the journals of the State legislatures are not available. The dates set out in this document are based upon the best information available.]

PERSPECTIVES ON THE CONSTITUTION

Following are notable quotations about the Constitution by Presidents, Federal judges, members of Congress and foreign visitors to the U.S.A. These quotations offer insights of people who have studied, used and shaped the Constitution.

Perspective of Presidents

1. George Washington, 1st President, 1789-1797.

> I wish the Constitution, which is offered, had been made more perfect; but I sincerely believe it is the best that could be obtained at this time. And, as a Constitutional door is opened for amendment hereafter, the adoption of it, under the present circumstances of the Union, is in my opinion desirable.
>
> --Letter to Patrick Henry
> From Mount Vernon
> September 24, 1787

> The warmest friends and the best supporters the Constitution has, do not contend that it is free from imperfections; but they found them unavoidable, and are sensible, if evil is likely to arise therefrom, the remedy must come hereafter; for in the present moment it is not to be obtained; and, as there is a constitutional door open for it, I think the people (for it is with them to judge), can, as they will have the advantage of experience on their side, decide with as much propriety on the alterations and amendments which are necessary, as ourselves, I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us.
>
> --Letter to Bushrod Washington
> November 10, 1787

The preservation of the sacred fire of liberty, and the destiny of the republican model of government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people.

--First Inaugural Address
April 30, 1789

2. John Adams, 2nd President, 1797-1801.

The operation of [the Constitution] has equaled the most sanguine expectations of its friends; and from an habitual attention to it, satisfaction in its administration, and delight in its effects upon the peace, order, prosperity, and happiness of the nation, I have acquired an habitual attachment to it, and veneration for it.

What other form of government, indeed, can so well deserve our esteem and love?

--Inaugural Address, 1797

3. Thomas Jefferson, 3rd President, 1801-1809.

During the contest of opinion through which we have past the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely and to speak and to write what they think. But this being now decided by the voice of the nation, enounced according to the rules of the constitution, all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate would be oppression.

--First Inaugural Address, 1801

4. James Madison, 4th President, 1809-1817.

> Every word of [the Constitution] decides a question between power and liberty.
>
> --Speech, 1792

> The Constitution is the cement of the Union.
>
> --First Inaugural Address, 1809

5. Andrew Jackson, 7th President, 1829-1837.

> I consider, then, the power to annul a law of the United States, assumed by one State, incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by the spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed.
>
> --Proclamation to the People of
> South Carolina
> December 10, 1832

6. Abraham Lincoln, 16th President, 1861-1865.

> I hold that in contemplation of universal law and of the Constitution the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever, it being impossible to destroy it except by some action not provided for in the instrument itself.
>
> Again: If the United States be not a government proper, but an association of States in the nature of contract merely, can it, as a contract, be peaceably unmade by less than all the parties who made it? One party to a contract may violate

it--break it, so to speak--but does it not require all to lawfully rescind it?

--First Inaugural Address
March 4, 1861

7. James A. Garfield, 20th President, 1881.

The supreme trial of the Constitution came at last under the tremendous pressure of civil war. We ourselves are witnesses that the Union emerged from the blood and fire of that conflict purified and made stronger for all the beneficent purposes of good government.

--Inaugural Address, 1881

8. Franklin D. Roosevelt, 32nd President, 1933-1945.

Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form.

--First Inaugural Address
March 4, 1933

9. Harry S Truman, 33rd President, 1945-1953.

Our Constitution and all our fines traditions rest on a moral basis.

--Speech, May 11, 1950

If there is one basic element in our Constitution, it is civilian control of the military. Policies are to be made by elected political officials, not by generals or admirals.

--Speech, March 1951

10. Gerald R. Ford, 38th President, 1974-1977.

I believe that truth is the glue that holds government together--not only our government, but civilization itself. That bond, though stained, is unbroken at home and abroad.

In all my public and private acts as your President, I expect to follow my instincts of openness and candor, with full confidence that honesty is always the best policy in the end.

My fellow Americans, our long, national nightmare is over. Our Constitution works. Our great republic is a Government of laws and not of men. Here the people rule. But there is a higher power, by whatever name we honor Him, who ordains not only righteousness but love, not only justice but mercy.

--Inaugural Address, 1974

During the period of my own service in this Capitol and in the White House, I can recall many orderly transitions of governmental responsibility --of problems as well as of position, of burdens as well as of power.

The genius of the American system is that we do this so naturally and so normally. There are no soldiers marching in the streets except in the inaugural parade; no public demonstrations except for some of the dancers at the inaugural ball; the opposition party doesn't go underground but goes on functioning vigorously in the Congress and in the country; and our vigilant press goes right on probing and publishing our faults and follies, confirming the wisdom of the framers of the First Amendment.

--State of the Union Address to
Congress
January 12, 1977

Perspectives of Federal Judges

1. John Marshall, Chief Justice of the United States Supreme Court, 1801-1835.

> The government of the United States has been emphatically termed a government of laws, and not of men.
>
> --*Marbury v. Madison*, 1803

> ...the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature...a law repugnant (offensive) to the constitution is void.... The rule (law) must be discharged.
>
> --*Marbury v. Madison*, 1803

> Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate..which are not prohibited...are constitutional.
>
> --*McCulloch v. Maryland*, 1819

2. John Marshall Harlan, Associate Justice of the United States Supreme Court, 1877-1911.

> In the eyes of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens....
>
> --*Plessy v. Ferguson*, 1896

3. Oliver Wendell Holmes, Jr., Associate Justice of the United States Supreme Court, 1902-1932.

> ...that the ultimate good desired is better reached by free trade in idea...that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their

> [people's] wishes safely can be carried out. That at any rate is the theory of our Constitution.
>
> --Abrams v. United States, 1919

4. Louis D. Brandeis, Associate Justice of the United States Supreme Court, 1916-1939.

> The makers of our Constitution...conferred, as against the Government, the right to be let alone--the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed must be deemed a violation of the Constitution.
>
> --Olmstead v. United States, 1928

5. Charles Evans Hughes, Associate Justice of the United States Supreme Court, 1910-1916; Chief Justice, 1930-1948.

> The greater the importance of safeguarding the community from incitement to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the Constitutional rights to free speech, free press and free assembly in order to maintain the opportunity for free political discussion, [so that] government may be responsive to the will of the people and that changes...may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of Constitutional government.
>
> --De Jonge v. Oregon, 1937

6. Learned Hand, Federal Judge, 1909-1961.

> Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no courts to save it... What then is the spirit of liberty? I cannot define it; I can only tell you my own

> faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias....
>
> --Address in New York City's
> Central Park, 1944

7. Hugo L. Black, Associate Justice of the United States Supreme Court, 1937-1971.

> In interpreting the Bill of Rights, I willingly go as far as a liberal construction of the language takes me, but I simply cannot in good conscience give a meaning to words which they have never before been thought to have and which they certainly do not have in common ordinary usage. I will not distort the words of the Amendment in order to "keep the Constitution up to date" or "bring it into harmony with the times." It was never meant that this Court have such power, which in effect would make us a continuous functioning constitutional convention.
>
> --Katz v. United States, 1967

8. Earl Warren, Chief Justice of the United States Supreme Court, 1953-1969.

> The Court doesn't make law consciously. It doesn't do it by trying to usurp the role of the Congress, but only because of the very nature of our job. When two litigants come into Court, one may say: "An act of Congress means this." The other says it means the opposite. We then say it means one of the two or something else in between. In that way we are making the law aren't we?
>
> --Quoted in Jack H. Pollack,
> Earl Warren: The Judge Who Changed America, 1979

9. John J. Sirica, Federal Judge, 1957- .

> While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.
>
> --Opinion Sustaining Subpoena
> Issued to Richard Nixon
> August 29, 1973

> The Constitution makes no mention of special presidential immunities.... Though the President is elected by nation-wide ballot, and is often said to represent all the people, he does not embody the nation's sovereignty. He is not above the law's commands.... Sovereignty remains at all times with the people, and they do not forfeit through elections the right to have law construed against and applied to every citizen.
>
> --Opinion Sustaining Subpoena
> Issued to Richard Nixon
> August 29, 1973

10. Sandra Day O'Connor, Associate Justice of the United States Supreme Court, 1981- .

> Under our federal system, the federal and state "courts are equally bound to guard and protect rights secured by the Constitution."
>
> --Rose v. Lundy, 1982

Perspectives of Members of Congress

1. Henry Clay, represented Kentucky in both the House and Senate.

> The Constitution of the United States was made not merely for the generation that then existed, but for posterity--unlimited, undefined, endless, perpetual posterity.
>
> --Speech in U.S. Senate
> January 29, 1850

2. Daniel Webster, represented Massachusetts in both the House and Senate.

> One country, one constitution, one destiny.
>
> --Speech, March 15, 1837

> If the government of the United States be the agent of the state governments, then they may control it, provided they can agree in the manner of controlling it; if the agent of the people, then the people alone can control it, restrain it, modify, or reform it.... It is, Sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be the supreme law. We must either admit the proposition or dispute their authority.
>
> --Speech in U.S. Senate
> January 26, 1830

3. J. C. Calhoun, represented South Carolina in both the House and Senate.

> ...to destroy the Constitution would be to destroy the Union. But the only reliable and certain evidence of devotion to the Constitution is to abstain, on the one hand, from violating it, and to repel, on the other, all attempts to violate it. It is only by faithfully performing these

> high duties that the Constitution can be preserved, and with it the Union....
>
> --Speech in the U.S. Senate, 1850

Perspectives of Foreigners

1. William Pitt, Prime Minister of the United Kingdom of Great Britain and Member of the House of Commons.

> It will be the pattern for all future constitutions and the admiration of all future ages.
>
> --Speech, 1789

2. Alexis de Toqueville, French visitor to the United States.

> ...the Americans have acknowledged the right of the judges to found their decisions on the Constitution rather than on laws [statutes]. In other words, they have not permitted them to apply such law as may appear to them to be unconstitutional.
>
> --Democracy in America, Part I, 1835

> An American constitution is not supposed to be immutable, as in France; nor is it susceptible of modification by the ordinary powers of society, as in England. It constitutes a detached whole, which, as it represents the will of the whole people, is no less binding on the legislator than on the private citizen, but which may be altered by the will of the people in predetermined cases, according to established rules. In America, the constitution may therefore vary; but as long as it exists, it is the origin of all authority, and the sole vehicle of the predominating force....
>
> In the United States, the constitution governs the legislator as much as the private citizen: as it is the first of laws, it cannot be modified by

a law; and it is therefore just that the tribunals should obey the constitution in preference to any law.

--Democracy in America, Part I, 1835

3. William Ewart Gladstone, Prime Minister of Great Britain and Member of the House of Commons.

> As the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man.

--Kin Beyond the Sea, in The North American Review, September 1878

> I have always regarded that Constitution as the most remarkable work known to me in modern times to have been produced by the human intellect, at a single stroke (so to speak), in its application to political affairs.

--Letter to the Committee in charge of the celebration of the Centennial Anniversary of the American Constitution July 20, 1887

4. Lord Bryce, British visitor to the United States, later served as Ambassador from Great Britain to the United States.

> The Constitution of 1789 deserves the veneration with which the Americans have been accustomed to regard it. It is true that many criticisms have been passed upon its arrangement, upon its omissions, upon the artificial character of some of the institutions it creates.... Yet, after all deductions, it ranks above every other written constitution for the intrinsic excellence of its scheme, its adaptation to the circumstances of the people, the simplicity, brevity, and precision of its language, its judicious mixture of definiteness in principle with elasticity in details.

--The American Commonwealth, 1888